Dr Zakir Abdul Karim Naik v Ramasamy a/l Palanisamy and another suit

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NOS WA-23CY-53–10 OF 2019 AND WA-23CY-70–12 OF 2019
HAYATUL AKMAL J
4 JANUARY 2024

Tort — Defamation — Defamatory publications — Plaintiff claimed defendant had maliciously libelled and slandered him on five occasions — Whether publications were defamatory in nature — Whether publications referred to plaintiff — Whether publications published to third parties — Whether claim of defamation established

Tort — Defamation — Defences — Defendant pleaded justification, fair comments and qualified privilege as defences — Whether defendant established defences pleaded

There were two suits involving similar parties with similar issues ie Suits 53 and 70. Both suits were by Dr Zakir Abdul Karim Naik as the plaintiff ('Dr Zakir') against Ramasamy s/o Palaniasamy as the defendant ('Ramasamy'). Dr Zakir was a permanent resident of Malaysia while Ramasamy was the Deputy Chief Minister II of Penang at the time of the alleged tortuous offences. Suits 53 and 70 were grounded on five defamatory publications by Ramasamy against Dr Zakir over a period of three and a half years. It was claimed that Ramasamy, on five separate occasions, maliciously published offending materials that were defamatory of Dr Zakir. On 10 April 2016, Ramasamy called Dr Zakir a satan in his Facebook post ('the first defamatory publication'). On 1 October 2017, Ramasamy published another defamatory publication on Dr Zakir in an article he penned named 'Is Malaysia harbouring alleged fugitive Zakir Naik?' ('the second defamatory publication'). On 9 August 2019, in another article he penned, Ramasamy said that 'Naik Should Not Question the Loyalty of Hindus in Malaysia' ('the third defamatory publication'). On 20 August 2019, Ramasamy slandered Dr Zakir in an interview on India Today ('the fourth defamatory publication'). On 8 November 2019, Ramasamy made another defamatory remark against Dr Zakir in an article entitled 'DAP leader accuses Zakir camp of faking Tamil Tigers revival' ('the fifth defamatory publication'). Dr Zakir took the position that the statements in the first to fifth defamatory publications, in their natural and ordinary meaning, were defamatory of him that had been published and republished, were malicious and spurious and had imputations/insinuations. Ramasamy, in his defence, pleaded the defences of justification and fair comments and in the alternative, claimed qualified

privilege as it was raised for public concern and interest. A

Held, allowing Suits 53 and 70:

(1) Ramasamy had failed to establish his proffered defences to the first defamatory publication. The use of the term satan could never be in an illustrative manner or metaphorically and such an argument was misconceived and misplaced. It was a maliciously derogatory terminology against anyone. Dr Zakir's statements or speeches had been unnecessarily dissected into pieces and taken out of their intended context to skew an adverse view of the man, which was unjust. Ramasamy's impugned first defamatory publication was a personal attack on Dr Zakir. Ramasamy's demeanour and intent on vilifying Dr Zakir with those unfounded allegations (without at all verifying the source) in the first impugned defamatory publication manifested malice that would automatically disqualify the defences he proffered over his conduct. There was no truth or substantial truth in the impugned statements of the first defamatory publication. This untoward provocation could have resulted in unnecessary public unrest. The impugned defamatory publication carried adverse imputations on Dr Zakir (see paras 28, 29(a), 29(e), 29(l)-(m) & 29(o)-(p)). B C D E

(2) Ramasamy had failed to establish his proffered defences to the second defamatory publication. The second defamatory publication was also a targeted personal attack on the personality of Dr Zakir. The offending article by Ramasamy was defamatory and carried adverse connotations. The offending article was constructed to rile up the Malaysian public against Dr Zakir and was grounded on unverified sources of information. There was no truth or substantial truth in the impugned statements of the second defamatory publication (see paras 37 & 38(g)-(i)). F G

(3) Ramasamy had failed to establish his proffered defences to the third and fourth defamatory publications. Ramasamy's attempted explanation was unconvincing. The alternative meaning suggested by Ramasamy was an afterthought in trying to conform with the legal requirement on justification, fair comment, and qualified privilege. It was evident that the third unfounded defamatory publication was also a targeted personal attack on Dr Zakir. On the fourth unfounded defamatory publication, the offending interview was indeed slanderous of Dr Zakir. Similar to the first and second defamatory publications, the third and fourth defamatory publications were also constructed to provoke anger and hatred against Dr Zakir using unverified sources of information in the offending publications. There was no truth or substantial truth in the impugned statements of the third and fourth defamatory publications (see paras 47, 48, 48(f)-(g), 48(i) & 48(l)). H I

(4) Ramasamy had failed to establish his proffered defences to the fifth defamatory publication. The fifth unfounded defamatory publication was also a personal attack on Dr Zakir. The offending article by Ramasamy was defamatory. The position taken by Ramasamy that the offending publication merely referred to Dr Zakir's supporters only was unsustainable. The degree of hostility shown by Ramasamy towards Dr Zakir did not abate throughout the three and half years concerning the five impugned defamatory publications. It had become highly personal, with evidence pointing to comparative religious discourses being taken out of context. Similar to the earlier four defamatory publications, the fifth defamatory publication was also constructed to provoke anger and hatred against Dr Zakir using unverified sources of information in the offending publication. Ramasamy's conduct had tarnished, smeared, and damaged Dr Zakir's standing and credibility to the public, and he must be held accountable (see paras 55, 56(a)-(b), (d)-(e) & (h)).

(5) On the balance of probabilities, Dr Zakir had succeeded in establishing his claim on defamation in the five impugned publications by Ramasamy. In the context that it was issued, the five offending publications carried libellous and slanderous connotations on Dr Zakir. The impugned five defamatory publications undoubtedly referred to Dr Zakir, published on social media and online news platforms, a news medium with no borders. Dr Zakir had, therefore, satisfied three essential elements of the tort of defamation. No convincing evidence to establish the truth or substantially the truth of the five impugned defamatory publications for justification, fair comments, and qualified privilege to apply. Ramasamy's proffered defences were without merits and unsustainable. The five impugned defamatory publications were personal attacks angled to disparage, ridicule and lower Dr Zakir in the eyes of the general public (see paras 80 & 82–85).

(6) Dr Zakir had discharged his burden in establishing his claims in Suit 53 and Suit 70. Ramasamy was liable to pay Dr Zakir a cumulative award of damages amounting to RM1.45m, comprising of: (a) general damages of RM200,000 for each defamatory publication; (b) compensatory damages of RM20,000 for each defamatory publication; (c) aggravated damages of RM20,000 for each defamatory publication; and (d) exemplary damages of RM50,000 for each defamatory publication. Further, from the repetitive nature of Ramasamy continuously targeting and publishing offending/defamatory materials on Dr Zakir, for over three and a half years unchecked, injunctive reliefs were necessary to arrest it from recurring in the future. Publishing an unreserved, unequivocal and unconditional apology was also allowed (see paras 86 & 88–98).

[Bahasa Malaysia summary

Terdapat dua saman melibatkan pihak yang serupa dengan isu yang sama iaitu Saman 53 dan 70. Kedua-dua saman itu adalah oleh Dr Zakir Abdul Karim Naik selaku plaintif ('Dr Zakir') terhadap Ramasamy a/l Palaniasamy sebagai defendan ('Ramasamy'). Dr Zakir adalah pemastautin tetap Malaysia manakala Ramasamy adalah Timbalan Ketua Menteri II Pulau Pinang pada masa yang didakwa melakukan kesalahan tort. Saman 53 dan 70 berlandaskan lima penerbitan berunsur fitnah oleh Ramasamy terhadap Dr Zakir dalam tempoh tiga setengah tahun. Adalah didakwa bahawa Ramasamy, dalam lima peristiwa berasingan, berniat jahat menerbitkan bahan-bahan menyinggung yang memfitnah Dr Zakir. Pada 10 April 2016, Ramasamy menggelar Dr Zakir sebagai syaitan dalam catatan *Facebook*nya ('penerbitan fitnah pertama'). Pada 1 Oktober 2017, Ramasamy menerbitkan satu lagi penerbitan fitnah mengenai Dr Zakir dalam artikel yang ditulisnya berjudul 'Is Malaysia harbouring alleged fugitive Zakir Naik?' ('penerbitan fitnah kedua'). Pada 9 Ogos 2019, dalam artikel lain yang ditulisnya, Ramasamy berkata bahawa 'Naik Should Not Question the Loyalty of Hindus in Malaysia' ('penerbitan fitnah ketiga'). Pada 20 Ogos 2019, Ramasamy memfitnah Dr Zakir dalam temu bual di India Today ('penerbitan fitnah keempat'). Pada 8 November 2019, Ramasamy membuat satu lagi kenyataan fitnah terhadap Dr Zakir dalam artikel bertajuk 'DAP leader accuses Zakir camp of faking Tamil Tigers revival' ('penerbitan fitnah kelima'). Dr Zakir mengambil pendirian bahawa kenyataan dalam penerbitan fitnah pertama hingga kelima, dalam maksud semula jadi dan biasa, adalah memfitnah beliau yang telah diterbitkan dan diterbitkan semula, berniat jahat dan palsu serta mempunyai tohmahan/sindiran. Ramasamy, dalam pembelaannya, memplid pembelaan justifikasi dan ulasan adil dan sebagai alternatif, menuntut perlindungan layak kerana ia dibangkitkan untuk kebimbangan dan kepentingan awam.

Diputuskan, membenarkan Saman 53 dan 70:

(1) Ramasamy telah gagal membuktikan pembelaan yang dikemukakannya kepada penerbitan fitnah pertama. Penggunaan istilah syaitan tidak sekali-kali boleh berbentuk ilustrasi atau metafora dan hujah seperti itu telah disalah anggap dan disalah letak. Ia adalah istilah yang menghina sesiapa sahaja. Kenyataan atau ucapan Dr Zakir telah dipecah menjadi beberapa bahagian dan dikeluarkan dari konteks yang dimaksudkan untuk menyelewengkan pandangan buruk terhadap lelaki itu, yang mana adalah tidak adil. Penerbitan fitnah pertama Ramasamy adalah serangan peribadi terhadap Dr Zakir. Sikap dan niat Ramasamy untuk memburuk-burukkan Dr Zakir dengan dakwaan tidak berasas itu (tanpa sama sekali mengesahkan sumber) dalam penerbitan fitnah pertama yang dipersoalkan menunjukkan niat jahat yang secara automatik akan membatalkan pembelaan yang dikemukakannya atas kelakuannya. Tidak ada kebenaran atau kebenaran besar dalam kenyataan yang

dipersoalkan dari penerbitan fitnah pertama. Provokasi yang tidak diingini ini boleh mengakibatkan kekacauan awam yang tidak diperlukan. Penerbitan fitnah yang dipersoalkan membawa taksiran bertentangan terhadap Dr Zakir (lihat perenggan 28, 29(a), 29(e), 29(l)-(m) & 29(o)-(p)).

(2) Ramasamy telah gagal membuktikan pembelaan yang dikemukakannya kepada penerbitan fitnah kedua. Penerbitan fitnah kedua juga merupakan serangan peribadi yang disasarkan ke atas personaliti Dr Zakir. Artikel yang menyinggung oleh Ramasamy adalah berunsur fitnah dan membawa konotasi bertentangan. Artikel yang menyinggung itu dibina untuk menimbulkan kemarahan masyarakat Malaysia terhadap Dr Zakir dan berdasarkan sumber maklumat yang tidak disahkan. Tiada kebenaran atau kebenaran besar dalam kenyataan yang dipersoalkan bagi penerbitan fitnah kedua (lihat perenggan 37 & 38(g)-(i)).

(3) Ramasamy telah gagal membuktikan pembelaan yang dikemukakannya kepada penerbitan fitnah ketiga dan keempat. Percubaan penjelasan Ramasamy tidak meyakinkan. Makna alternatif yang dicadangkan oleh Ramasamy adalah satu pemikiran kemudian dalam usaha untuk mematuhi keperluan undang-undang mengenai justifikasi, ulasan adil, dan perlindungan layak. Terbukti bahawa penerbitan fitnah ketiga yang tidak berasas itu juga merupakan serangan peribadi yang disasarkan ke atas Dr Zakir. Pada penerbitan fitnah tidak berasas keempat, temu bual yang menyinggung itu sememangnya memfitnah Dr Zakir. Sama seperti penerbitan fitnah pertama dan kedua, penerbitan fitnah ketiga dan keempat juga dibina untuk mencetuskan kemarahan dan kebencian terhadap Dr Zakir menggunakan sumber maklumat yang tidak disahkan dalam penerbitan yang menyinggung. Tiada kebenaran atau kebenaran besar dalam kenyataan yang dipersoalkan bagi penerbitan fitnah ketiga dan keempat (lihat perenggan 47, 48, 48(f)-(g), 48(i) & 48(l)).

(4) Ramasamy telah gagal membuktikan pembelaan yang dikemukakannya kepada penerbitan fitnah kelima. Penerbitan fitnah tidak berasas kelima juga merupakan serangan peribadi terhadap Dr Zakir. Artikel yang menyinggung oleh Ramasamy adalah fitnah. Pendirian yang diambil oleh Ramasamy bahawa penerbitan yang menyinggung hanya merujuk kepada penyokong Dr Zakir sahaja adalah tidak dapat dipertahankan. Tahap permusuhan yang ditunjukkan oleh Ramasamy terhadap Dr Zakir tidak reda sepanjang tiga setengah tahun berhubung lima penerbitan berunsur fitnah. Ia telah menjadi sangat peribadi, dengan keterangan yang menunjukkan wacana perbandingan agama dibawa keluar dari konteks. Sama seperti empat penerbitan fitnah terdahulu, penerbitan fitnah kelima juga dibina untuk mencetuskan kemarahan dan kebencian terhadap Dr Zakir menggunakan sumber maklumat yang tidak disahkan dalam penerbitan yang menyinggung itu. Kelakuan Ramasamy telah

mencemarkan, memburuk-burukkan, dan merosakkan kedudukan dan kredibiliti Dr Zakir kepada orang ramai, dan beliau mesti bertanggungjawab (lihat perenggan 55, 56(a)-(b), (d)-(e) & (h)).

(5) Atas imbangan kebarangkalian, Dr Zakir telah berjaya membuktikan tuntutan fitnah dalam lima penerbitan yang dipersoalkan oleh Ramasamy. Dalam konteks ia dikeluarkan, lima penerbitan yang menyinggung itu membawa konotasi libel dan slander terhadap Dr Zakir. Lima penerbitan fitnah yang dipersoalkan sudah pasti merujuk kepada Dr Zakir, yang diterbitkan di media sosial dan platform berita dalam talian, media berita tanpa sempadan. Oleh itu, Dr Zakir telah memenuhi tiga elemen penting dalam tort fitnah. Tiada keterangan yang meyakinkan untuk membuktikan kebenaran atau sebahagian besar kebenaran daripada lima penerbitan fitnah yang dipersoalkan untuk justifikasi, ulasan adil dan perlindungan layak untuk memohon. Pembelaan yang dikemukakan Ramasamy adalah tanpa merit dan tidak dapat dipertahankan. Lima penerbitan fitnah yang dipersoalkan adalah serangan peribadi yang bersudut memperlekehkan, mengejek dan merendahkan Dr Zakir di mata masyarakat umum (lihat perenggan 80 & 82–85).

(6) Dr Zakir telah melepaskan bebannya dalam membuktikan tuntutannya dalam Saman 53 dan Saman 70. Ramasamy bertanggungjawab membayar Dr Zakir award ganti rugi kumulatif berjumlah RM1.45 juta, yang terdiri daripada: (a) ganti rugi am sebanyak RM200,000 bagi setiap penerbitan fitnah; (b) ganti rugi pampasan sebanyak RM20,000 bagi setiap penerbitan fitnah; (c) ganti rugi teruk sebanyak RM20,000 bagi setiap penerbitan fitnah; dan (d) ganti rugi teladan sebanyak RM50,000 bagi setiap penerbitan fitnah. Tambahan lagi, daripada sifat berulang-ulang Ramasamy yang berterusan menyasarkan dan menerbitkan bahan-bahan yang menyinggung/fitnah terhadap Dr Zakir, selama lebih tiga setengah tahun tidak dikawal, relif injunksi diperlukan untuk menahannya daripada berulang pada masa hadapan. Menerbitkan permohonan maaf yang sepenuhnya, tidak berbelah bahagi dan tidak bersyarat juga dibenarkan (lihat perenggan 86 & 88–98).]

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YB Dato' Dr Hasan bin Mohamed Ali lwn YB Mulia Tengku Putra bin Tengku Awang dan lain-lain [2010] 8 MLJ 269; [2010] 7 CLJ 856, HC (refd)
Youssoupoff v Metro-Goldwyn-Mayer Pictures Ltd [1934] 50 TLR 581, CA (refd)

Legislation referred to

Criminal Procedure Code [IN] s 82
Defamation Act 1957 ss 5, 8, 9
Defamation Act 2013 [UK]
Evidence Act 1950 ss 101, 102, 103
Penal Code
Rules of Court 2012 O 78 r 3, 3(2)
Sedition Act 1948
Specific Relief Act 1950 ss 50, 51(2), 52, 53

Akberdin bin Abdul Kader (with Sulaiman Abdullah, Mohd Rafie bin Mohd Shafie, Mohd Reza bin Mohd Rafie, Ummi Kartini bt Abd Latiff, Meor Hafiz bin Salehan and Ardy Suffian bin Akberdin) (Akberdin & Co); (Chambers of Rafie Mohd Shafie & Assoc) for the plaintiff.
Razlan Hadri (with Ranjit Singh, Ragunath Kesavan, Mureli Navaratnam, Navpreet Singh and Felix Lim) (Mureli Navaratnam) for the defendant.

Hayatul Akmal J:

INTRODUCTION

[1] In a nutshell:

(a) there are two suits involving similar parties with similar issues:

(i) Suit WA-23CY-53–10 of 2019 ('Suit 53'); and

(ii) Suit WA-23CY-70–12 of 2019 ('Suit 70');

(iii) both suits are by Dr Zakir Naik against Ramasamy. Both cases are grounded on alleged acts of defamation committed by the latter against the former on four separate libellous and one slanderous occasion.

(b) Dr Zakir Abdul Karim Naik ('Dr Zakir'), the plaintiff, is a permanent resident of Malaysia; and

(c) the defendant, Ramasamy s/o Palaniasamy ('Ramasamy'), was the Deputy Chief Minister II of Penang at the time of the alleged tortuous offences.

[2] In Suit 53, Dr Zakir claimed Ramasamy had maliciously libelled him on three separate occasions (10 April 2016, 1 October 2017, 9 August 2019), while on 20 August 2019, maliciously slandered him in an online interview on India Today:

(a) Dr Zakir contended that the four defamatory publications were unsupported, were published with malice, hatred, envy, and spite, had disparaged, and ridiculed him to the general public, and as a result, has caused him losses and damage;

(b) in Suit 70, Dr Zakir claimed Ramasamy had maliciously libelled him by publishing defamatory materials on 8 November 2019. Dr Zakir took the legal position that the publications, in their natural and ordinary meaning, are defamatory of him that had been published and republished;

(c) Ramasamy, in denying the two foregoing suits, argued:

(i) for Suit 53:

(1) the defence of justification and fair comment applies to first, second, third, and fourth defamatory publications, and

(2) in the alternative, claimed qualified privilege as it was raised for public concern and interest.

(ii) for Suit 70:

(iii) the defence of justification and fair comment applies to the defamatory publication; and

(iv) in the alternative, claimed qualified privilege as it was raised for public concern and interest.

[3] On 2 November 2023:

(a) after hearing parties with their respective arguments, all things considered, this court find Dr Zakir has succeeded in proving his case on the balance of probabilities; therefore, this court finds in favour of Dr Zakir and allowed Suit 53 and Suit 70 against Ramasamy;

(b) Ramasamy was ordered to pay cumulatively RM1,520,000 comprising:

(i) RM1m in general damages for the five defamatory publications;

(ii) RM100,000 compensatory damages for the five defamatory publications;

(iii) RM100,000 aggravated damages for the five defamatory publications;

(iv) RM250,000 exemplary damages for the five defamatory publications; and

(v) RM70,000 in global costs payable within 30 days from the order.

(c) aggrieved, Ramasamy filed this appeal against my decision in Suit 53 and Suit 70. Since these two suits were heard together, dealing with similar facts, I will prepare a single written grounds of judgment to avoid duplicity. My reasons are as follows.

[4] The witnesses at the trial are:

(a) plaintiff, PW1: Dr Zakir Naik Abdul Karim Naik; and

(b) defendant, DW1: P Ramasamy a/l Palanisamy.

(i) parties agreed in court (23 August 2022) to only call PW1 and DW1 as witnesses to offer evidence at the trial of Suit 53 and Suit 70;

(ii) parties also agreed that for Suit 53 and Suit 70, all Part C documents would be taken as Part B documents; and

(iii) Ramasamy does not dispute the publication of the five alleged defamatory publications.

A BRIEF FACTS

[5] In a nutshell, Suit 53 and Suit 70 are grounded on five defamatory publications by Ramasamy against Dr Zakir over a period of three and half years (10 April 2016–8 November 2019). It is claimed that Ramasamy, on these five separate occasions, maliciously published offending materials that are defamatory of Dr Zakir, as follows:

[6] First defamatory publication:

(a) Ramasamy called Dr Zakir a satan in his Facebook post on 10 April 2016. The full text of that post in a nutshell says:

> Let us get 'Satan' Zakir Naik out of this country!
>
> The 'Satan' Zakir Naik is in the country as a result of the invitation by the Terengganu state government.
>
> He is a Muslim preacher and evangelist who has nothing but hatred and contempt for non-Muslims.
>
> He has been banned in Canada and the UK for his hate lectures. Even some sections of Muslims in India have termed him as a liar, man of half-truth and purveyor of hate.
>
> Peace-loving Malaysians, whether they are Muslims or non-Muslims, should lodge nationwide police reports against Zakir Naik and his son. Hindu/Indian NGOs and individuals should take the lead in making the police reports.
>
> PSAT will be taking the lead in lodging police reports in Penang tomorrow. Ask Zakir Naik to go back to India so that he could do all his preaching there. (sic)

(b) Dr Zakir took the position that the statements above, in their natural and ordinary meaning, are defamatory of him that had been published and republished. It was malicious and spurious and had imputed/insinuated to the public at large that Dr Zakir is:

(i) an evil man;

(ii) he is a cause of disharmony among the multiracial citizens of Malaysia;

(iii) the Terengganu State Government made a huge mistake by inviting him to lecture in Terengganu;

(iv) Dr Zakir is not an honest Muslim preacher in propagating the teachings of Islam; and

(v) Dr Zakir had committed an offence or offences in other countries, including Canada and the United Kingdom.

(c) on receiving a critical public reaction, Ramasamy removed the alleged defamatory posting, but he allegedly did not directly apologise to Dr Zakir over the issue.

[7] Second defamatory publication:

(a) on 1 October 2017 (approximately 17 months after the first defamatory publication), Ramasamy published another defamatory publication on Dr Zakir in an article he penned named 'Malaysia harbouring alleged fugitive Zakir Naik?'. In the said article, Ramasamy allegedly issued the following defamatory statements. In a nutshell:

(i) Dr Zakir is one of India's most wanted fugitives and may be hiding in Malaysia;

(ii) it only makes sense for Malaysia to hand over those suspected of committing crimes in India to the Indian authorities;

(iii) India wants Dr Zakir for suspected terrorist-related activities and links with the underworld;

(iv) Dr Zakir's preaching had something to do with the terrorist attacks in a cafe in Dhaka, Bangladesh, some time back. The Indian authorities also have evidence that Naik was responsible for instigating some youths in Kera/a to take part in Islamic State-related (IS) activities;

(v) Naik's alleged long-established links with Mumbai's underworld. It surfaced recently that Iqbal Kaskar, the brother of Dawood Ibrahim, also one of India's most wanted criminals, had links with Naik;

(vi) Iqbal Kaskar was the chief financial officer responsible for raising funds from underworld activities to finance Naik's Islamic Research Foundation (IRF);

(vii) but surely, they cannot be silent over a person suspected of bringing death and destruction onto innocent people by engaging in the worst forms of preaching, leading to terrorist activities;

(viii) events are slowly but surely unfolding that even Saudi Arabia is not willing to provide sanctuary to Naik, given the overwhelming evidence against him for inciting terrorist activities; and

(ix) it (Malaysia) continues to harbour suspected criminals who come in the guise of religious scholars and preachers.

(b) Dr Zakir took the position that the statements above, in their natural and ordinary meaning, are defamatory of him that had been published and

republished. It was malicious and spurious and had imputed/insinuated to the public at large that Dr Zakir is:

(i) is the most wanted criminal nationwide;

(ii) he is evading arrest;

(iii) he is involved in illegal activities;

(iv) he should be handed over to the Indian Government to stand trial for crimes committed in India;

(v) the Malaysian Government should not give him sanctuary as it is equivalent to harbouring and/or sheltering a criminal;

(vi) he is a leader of an internationally organised criminal group;

(vii) he is a double agent, whereby he has an ulterior motive to spread far-right ideology among peace-loving Malaysians;

(viii) he is a mastermind in coordinating criminal activities across the globe; and

(ix) he is not a trustworthy Muslim preacher and has no interest in propagating peace and harmony among Malaysians.

[8] Third defamatory publication:

(a) on 9 August 2019 (approximately 22 months after the second defamatory publication), in an article he penned, Ramasamy said that 'Naik Should Not Question the Loyalty of Hindus in Malaysia'. In a nutshell, the article in a nutshell says:

(i) among the non-Muslims in Malaysia, Naik is not objectionable because he is a fugitive running from the law or for his lectures on Islam, but for his mischievous comparative perspective on religions;

(ii) by using this comparative perspective, Naik has unduly angered the non-Muslims by disparaging and belittling their faiths. In fact, by doing this, he has found a way to be accepted by some sections of the right-wing conservative Islamic force;

(iii) by engaging in this comparative approach, which is hardly comparative in the true sense of the word, he has belittled faiths other than Islam;

(iv) this is the core of the problem and why Naik should not be allowed to touch on other religions because it will enable other faiths to be used as a punching bag by him;

(v) he couldn't help himself from mischief that was hurtful to Hindus in Malaysia;

(vi) this mischievous and frivolous comment was uncalled for;

(vii) isn't it treasonous to say that Hindus are a bunch of disloyal elements in the country? Does he realise that more than 80% of the Hindus voted for the PH government under the leadership of Mahathir?

(viii) he is not loyal to India. Why run away from the country that has the second highest Muslim population in the world after Indonesia?

(ix) if Naik is true to his religion, he should return to India and face the government rather than create mischief in Malaysia; and

(x) unfortunately, some Malaysians allow themselves to be manipulated by Naik for selfish reasons. The result is that Naik and Malaysians of all faiths will suffer the consequences of his actions.

(b) Dr Zakir took the position that the statements above, in their natural and ordinary meaning, are defamatory of him that had been published and republished. It was malicious and spurious and had imputed/insinuated to the public at large that Dr Zakir is:

(i) he is a dishonest person who would abuse the Islamic religion for his selfish purpose;

(ii) he has unfairly and dishonestly accused Malaysian Hindus of being disloyal to Malaysia;

(iii) he calculatedly attempted to create a gap among multi-ethnic and multi-religious Malaysians to obtain the support of the Malaysian Muslim community to enjoy immunity and privilege for his continued stay in Malaysia;

(iv) he is dishonestly leveraging and taking advantage of the current polemic relating to race and religion in the country for his survival and benefit;

(v) he has dubious motives for splitting the Malaysian population and bringing about disharmony and disunity among them;

(vi) he does not deserve to be accorded a permanent residency in Malaysia;

(vii) he is being used for specific political purposes and/or by political parties, and for that purpose, will use them to further his ambitions and, therefore, is partisan in Malaysian politics; and

(viii) he is a criminal and has committed several offences under the Penal Code and the Sedition Act.

[9] Fourth defamatory publication:

(a) on 20 August 2019 (approximately 11 days after the third defamatory publication), Ramasamy slandered Dr Zakir in an interview on India Today. In the said interview 'Zakir Naik Crackdown Penang Deputy CM Exclusive Interview with India Today on Zakir Ban', in a nutshell, he was recorded as saying:

(i) Zakir Naik questioned the loyalty of Hindus in Malaysia; he attacked them, saying that they were more loyal to the BJP or Modi government. Then, he said that the Chinese in Malaysia should leave Malaysia first before he could leave. And this has angered the non-Muslim communities in Malaysia;

(ii) he is trying to camouflage what is said in Kelantan, which was attacking the non-Muslims in Malaysia;

(iii) he has gone overboard in this country, and he has increased the tension between Muslims and non-Muslims in the nation;

(iv) I think Zakir Naik is not contributing to the peace and harmony of the various communities in Malaysia;

(v) and I have said before, he is a venom, he is a poison to Malaysia;

(vi) his apology should not fool us because he is not a well-meaning man; he is a hatemonger, and he engages in comparative religion basically to lambast religions other than Islam. So, we don't want him in this country because we have so many problems in Malaysia, and now we don't want a person like Zakir Naik coming into the country and creating problems;

(vii) he cannot use his PR status to come here and do his hatemongering, especially inciting the Muslims against the non-Muslims and vice versa;

(viii) and he's just a coward, running from one country to another. We don't expect a champion of Islam or a champion of any religion to run away to escape the law. If he is indeed a Muslim, he should face the Indian laws squarely and show Indian Muslims in India that he is the saviour of the Indian Muslims;

(ix) don't run here and hide behind the back of the Malaysian government; and

(x) I just want to expose him as a fraud: a trickster and a fugitive.

(b) Dr Zakir took the position that the statements above, in their natural and ordinary meaning, are defamatory of him that had been published and republished. It was malicious and spurious and had imputed/insinuated to the public at large that Dr Zakir:

(i) is an unprincipled and/or unethical person who would abuse the

Islamic religion for his personal gain and/or purpose;

(ii) has dishonestly accused the Malaysian Hindus of disloyalty to Malaysia and the Malaysian Prime Minister, Tun Dr Mahathir;

(iii) has calculatedly attempted to create a gap among the multi-ethnic religious Malaysians with the dubious motive of splitting the same and causing disharmony and disunity among them;

(iv) he, purportedly a fraudster, a trickster, and a fugitive, should not be given permanent resident status in Malaysia;

(v) he is a criminal who should stand trial and not act as a coward, running from one country to another;

(vi) he is a convict who has run away from the Indian authorities to seek refuge in Malaysia; and

(vii) he is a venom, a poison, a fraudster, a trickster, a fugitive, and a hate monger who is seeking asylum in Malaysia.

[10] Dr Zakir claims that the four unfounded defamatory publications were published with malice, hatred, envy, and spite, have disparaged and ridiculed him to the general public, and had caused him losses and damage. It had adversely impacted him:

(a) tarnishing, smearing, and damaging his reputation, standing and/or credibility in the eyes of the public;

(b) causing him to suffer grave humiliation, untold ridicule and/or severe embarrassment in the eyes of the public;

(c) inflicting him with scandal, odium, and utter contempt in the eyes of the public;

(d) exposing him to personal harm by inciting public anger, hatred and/or racial tension against him;

(e) causing mental anguish, trauma, and distress; and

(f) causing fear for his safety and that of his family.

[11] Dr Zakir's claims against Ramasamy:

(a) general damage;

(b) exemplary damages;

(c) aggravated damages. All are to be assessed by the court;

(d) he seeks a mandatory injunction to compel Ramasamy to remove the offending defamatory statements and a prohibitory injunction to restrain Ramasamy from such further tortuous conduct;

(e) he also seeks a formal apology to be published in the mainstream media within seven days of the order of the court; and

(f) costs.

[12] It was alleged in Suit 70 that:

Fifth defamatory publication:

(a) on 8 November 2019 (approximately 2.5 months after the fourth defamatory publication), Ramasamy made another defamatory remark against Dr Zakir in an article entitled 'DAP leader accuses Zakir camp of faking Tamil Tigers revival'. In a nutshell, Ramasamy was quoted as saying:

(i) the recent arrest of 12 individuals over their alleged links to the Liberation of Tamil Tigers Eelam is the work of controversial preacher Zakir Naik's supporter, said Penang Deputy Chief Minister II P Ramasamy;

(ii) Ramasamy accused the Indian-born preacher's camp and 'forces' of creating fake news about the revival of the LTTE in Malaysia to divert attention from India's bid to extradite him on charges of money laundering;

(iii) Ramasamy told The Malaysian Insight that there are 'forces' working in the direction of reviving the LTTE threat to distract from other issues;

(iv) 'Some agencies want to assert their authority (concerning these arrests)' he said;

(v) Zakir's supporters created doctored Facebook postings which implicated the 12 individuals. Including two DAP assemblymen attempting to revive the LTTE in the country, Ramasamy said;

(vi) 'Zakir Naik is one factor in this resurrection. After our opposition to him, his followers started spreading lies that I was LTTE from my Facebook page.' he said; and

(vii) 'Zakir's supporters created Facebook postings that were cleverly doctored to reveal images of local Indian leaders taking part in the so-called 'LTTE events'.

(b) Dr Zakir took the position that the statements above, in their natural and ordinary meaning, are defamatory of him that had been published and republished. It was malicious and spurious and had imputed/insinuated to the public at large that Dr Zakir:

(i) has instructed and persuaded the Malaysian authorities through 'back-door dealings' to take severe and stern actions against the supporters of Liberation Tigers of Tamil Eelam ('LTTE') in Malaysia to divert the attention from himself;

(ii) has manipulated and /or lobbied the Malaysian authorities for his benefit and /or advantages;

(iii) is the architect or mastermind of the arrest of the supporters of LTTE in Malaysia; and

(iv) it is being used for certain political purposes and/or political parties; he will use them to further his ambitions and, therefore, is a partisan in Malaysian politics.

(c) Dr Zakir claims that the offending fifth defamatory statement above was actuated by malice, hatred, envy, and spite without verifying the truth in those statements in its publication. It defames Dr Zakir. He claims that the impugned statement had:

(i) tarnished, smeared, and damaged his reputation, standing and/or credibility in the eyes of the public;

(ii) causing him to suffer grave humiliation, untold ridicule and/or severe embarrassment in the eyes of the public;

(iii) inflicting him with scandal, odium, and utter contempt in the eyes of the public;

(iv) exposing him to personal harm by inciting public anger, hatred and/or racial tension against him;

(v) causing mental anguish, trauma, and distress; and

(vi) causing fear for his safety and that of his family.

(d) Dr Zakir's claims against Ramasamy:

(i) general damages;

(ii) exemplary damages;

(iii) aggravated damages. All are to be assessed by the court;

(iv) he seeks a mandatory injunction to compel Ramasamy to remove the offending defamatory statements and a prohibitory injunction to restrain Ramasamy from such further tortuous conduct;

(v) he also seeks a formal apology to be published in the mainstream media within seven days of the order of the court; and

(vi) costs.

[13] Ramasamy, in his defence:

(a) for Suit 53:

(i) the defence of justification and fair comment applies to first, second, third, and fourth defamatory publications, and

(ii) in the alternative, claimed qualified privilege as it was raised for public concern and interest.

(b) for Suit 70:

(i) the defence of justification and fair comment applies to the fifth defamatory publication; and

(ii) in the alternative, claimed qualified privilege as it was raised for public concern and interest.

PARTIES SUBMISSIONS

[14] I have duly observed and considered the parties' arguments in canvassing for their positions in Suit 53 and Suit 70, as follows:

[15] Dr Zakir cited the requirement of O 78 r 3 of the ROC 2012, on the need to give particulars in a defamatory action. It would require Dr Zakir to establish that the five separate impugned publications: (a) bear defamatory imputations in their natural and ordinary meaning; (b) they refer to Dr Zakir; and (c) they have been published to third parties: *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315; [1989] 1 CLJ 152.

[16] It was said in *Chew Peng Cheng v Anthony Teo Tiao Gin* [2008] 5 MLJ 577; [2008] 8 CLJ 418 (HC) that a defamatory imputation is any imputation which may tend 'to lower the plaintiff in the estimation of right-thinking members of society generally', 'to cut him off from society' or 'to expose him to hatred, contempt or ridicule', is defamatory of him. An imputation may be defamatory whether or not it is believed by those to whom it is published.

First defamatory publication

[17] Dr Zakir argued that there can be no doubt that the first defamatory publication in Ramasamy's Facebook posting on 10 April 2016 (refer para 5(a)(i) above) is defamatory. It has been published and republished or

caused to be published or republished. After a critical public criticism, Ramasamy later removed the impugned publication from his Facebook account.

[18] Dr Zakir argued:

(a) 'Penang's P Ramasamy regrets calling Dr Zakir Naik Syaitan';

(b) 'Ramasamy apologises for calling Dr Zakir Naik satan'. Ramasamy agreed in his evidence that the word satan is derogatory of Dr Zakir: NOP, Vol 4, p 948, encl 72;

(c) Ramasamy's attempts to soften the severity of his statement by associating it with a metaphorical use of the word satan is untenable since the first impugned publication is clearly absent of such a suggestion. This assertion goes against the grain of his overall evidence on the first impugned defamatory publication;

(d) there is no compelling evidence that Dr Zakir had delivered hate speeches or harboured hatred and contempt against non-Muslims, as alleged by Ramasamy;

(e) there is no compelling evidence that Dr Zakir had ever been banned in Canada on the grounds of hate lectures, as alleged by Ramasamy;

(f) the alleged travel ban in the UK had already lapsed in 2013, several years before the first impugned defamatory publication. Ramasamy admitted in his evidence he had no evidence that Dr Zakir was banned from entering the UK. Ramasamy even agreed that the statement that Dr Zakir was prohibited from entering Canada and the UK was unjustified; and

(g) on 12 April 2016, Ramasamy issued a press release expressing his regret to the Malaysian public for the uneasiness caused by his impugned publication. He merely targeted Dr Zakir and not the Malaysian public.

[19] At the trial:

(a) Ramasamy admitted that he published the first impugned defamatory publication and removed it one or two days later. In *Asia Pacific Higher Learning Sdn Bhd v Eagle One Investment Sdn Bhd* [2018] 1 LNS 56 (HC) observed that in determining whether the article is defamatory, the article must be objectively read using the standard of an ordinary reasonable man. The truth or otherwise of the contents is another indicator of whether the article is defamatory. The introduction and conclusion mentioned in the article are also indicators of what the writer is trying to convey. Whether the writer had tried verifying the contents will give a glimpse of the writer's intention in writing the article;

(b) that posting was meant for the public at large: *Rekha d/o Munisamy v Ortus Expert White Sdn Bhd & Anor* [2021] 5 MLJ 836; [2021] 7 CLJ 353 (CA): the impugned statements made in the Facebook posting were for public consumption. *Lim Guan Eng v Razman bin Zakaria* [2022] MLJU 1052; [2022] 1 LNS 1108 (HC) affirmed by the Court of Appeal in 2023 that the defendant's Facebook account was accessible to the public and evidence of such accessibility were the comments made by the various third parties;

(c) the Court of Appeal in *Raja Syahrir bin Abu Bakar & Anor v Manjeet Singh Dhillon and other appeals* [2020] 3 MLJ 482; [2019] 4 CLJ 301 (CA), that those responsible for such re-publication of the defamatory materials are equally liable in defamation;

(d) there is no issue that the impugned defamatory publication refers to Dr Zakir: *Lim Guan Eng v Ruslan bin Kassim and another appeal* [2021] 2 MLJ 514; [2021] 4 CLJ 155 (FC) observed that the impugned statement had explicitly named the plaintiff;

(e) publication of the impugned defamatory statements to third parties is not an issue, as seen from the public reception and responses it had made. It had been communicated to third parties in a manner that had conveyed defamatory imputations about Dr Zakir: *Box 55, Sociedad Limitada & Ors v Drive M7 Sdn Bhd* [2018] MLJU 1614; [2018] 1 LNS 1715 (HC) citing *Gatley On Libel and Slander* (9th Ed) at p 134, that the fundamental principle is that the matter must be communicated to a third party in such a manner as to be capable of conveying the defamatory imputations about the plaintiff;

(f) Ramasamy:

(i) in light of the untruthfulness of his impugned statements, he displayed no remorse by contesting whether he had indeed, as claimed, apologised to Dr Zakir for vilifying him in that impugned publication;

(ii) I take cognisance of his evasive demeanour, which reflects on the credibility of his evidence in this proceeding;

(iii) he took the position notwithstanding the two articles produced in court at the trial: (1) Penang's P Ramasamy regrets calling Dr Zakir Naik Syaitan; and (2) Ramasamy apologises for calling Dr Zakir Naik satan, that he did not apologise to Dr Zakir;

(iv) Ramasamy's stand on the issue of an apology is grounded in the fact that if an apology can be established, it would amount to an admission of liability for defamatory Facebook posting as ruled in *Datuk Dr Awang Adek bin Hussin v The Edge Communications Sdn Bhd & Ors* [2011] MLJU 1379; [2012] 10 CLJ 340 (HC); and

(v) the Court of Appeal in *Chong Swee Huat & Anor v Lim Shian Ghee (t/a L & G Consultants & Education Services* [2009] 3 MLJ 665 (CA) observed that the letter of apology attempted only to justify rather than express remorse and regret for what had been done. It explains the granting of aggravated damages.

[20] Ramasamy pleaded justification, fair comment, and qualified privilege as his defences to the first impugned defamatory publication. He did not dispute the first defamatory publication but argued on the *Lucas-Box* plea of justification over the impugned publication (*Lucas-Box v News Group Newspapers Ltd; Lucas-Box v Associated Newspapers Group plc and others* [1986] 1 All ER 177). In *Tan Sri Dr Muhammad Shafee Abdullah v Tommy Thomas & Ors* [2018] 12 MLJ 98 (CA), the court was asked to consider two different interpretations put to the court:

(a) first, a defendant is now required to plead the alternative meaning he ascribes to the writing of which the plaintiff complains if that differs from the meaning pleaded by the plaintiff;

(b) second, the defendant must make clear what version of the facts he asserts to be true;

(c) a defendant in pleading justification is not obliged to ascribe a meaning to the words complained of; the defendant is, however, obliged to claim justification to clarify the meaning he seeks to justify; and

(d) the essence of the decision of *Lucas-Box*'s case is that the justification must be pleaded to inform the plaintiff and the court precisely what meaning the defendant will seek to justify. This is, however, an altogether different matter from saying that the defendant is obliged to say, yea or nay, whether that meaning is the one which the writing bears.

[21] In considering this plea, I observed a landmark ruling by the Federal Court in *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 6 MLJ 187 (FC) on the application of the common law defences in defamation in Malaysia vis a vis '*Reynold*s Privilege' and '*Lucas-Box* Justification':

(a) *Reynolds v Times Newspapers Ltd and others* [2001] 2 AC 127 (HL): it was held by the House of Lords that there are two requirements to qualify for the *Reynold*'s privilege:

(i) the publication concerned a matter of public interest; and

(ii) reasonable and fair steps were taken to gather, verify, and publish the information.

The House of Lords affirmed that the traditional ambit of qualified privilege should be extended somewhat and that it was available concerning political information.

The Federal Court opined that the public interest element in the defence should not be equated with only journalists or media outlets. It should apply to anyone who publishes or discloses material of public interest in any medium that meets and satisfies the test of responsible journalism. *Hasnul bin Abdul Hadi v Bulat bin Mohamed & Anor* [1978] 1 MLJ 75 was referred to where the basis of qualified privilege defence is grounded on public policy and convenience that the law will let a person make defamatory statements without incurring legal liability.

Lord Nichols, in *Reynold*'s, sets the factors to consider in responsible journalism:

(1) the seriousness of the allegation, the more serious the charge, the more the public is misinformed, and the individual harmed, if the public is misinformed and the individual harmed, if the allegation is not true;

(2) the nature of the information and the extent to which the subject matter is a matter of public concern;

(3) the source of information;

(4) the steps taken to verify the information;

(5) the urgency of the matter;

(6) whether the comment was sought from the appellant;

(7) whether the article contained the gist of the appellant's side of the story;

(8) the tone of the impugned article, and

(9) the circumstances of the publication, including the timing.

(b) *Lucas-Box v News Group Newspapers Ltd; Lucas-Box v Associated Newspapers Group plc and others* [1986] 1 All ER 177 (CA, UK) propounded the '*Lucas-Box* Justification' defence for defamation by ascribing and proving the respondent's own reasonable meaning to the impugned words or publication:

(i) if a plaintiff, in its defamation pleadings, ascribes a natural and ordinary meaning to the impugned words, the defendant may then rely on stating in his defence what he alleged was the natural and ordinary meaning of the words complained of; and

(ii) a defendant in defamation proceedings who wishes to rely on a plea of justification must make clear in the particulars of justification the case he is seeking to set up and must accordingly state clearly and explicitly the meaning he seeks to justify.

To rely on the *Lucas-Box* justification, it cannot be merely argued on submissions, but the *Lucas-Box* must be appropriately pleaded in the statement of defence. In *Syarikat Bekalan Air's* case, even though Tony Pua failed the *Reynolds* Privilege defence, The Federal Court found he succeeded in pleading and proving the *Lucas-Box* justification pleaded in his statement of defence. The Federal Court agreed with the Court of Appeal's finding that the impugned words could bear the reasonable meaning ascribed by the respondent. Therefore, the Federal Court agreed with the judgment of the Court of Appeal that the respondent had succeeded in the defence of justification. The Court of Appeal held that a defendant seeking to rely on the defence of justification must make clear the particulars of the case he is seeking to set up and accordingly state clearly and explicitly the meaning that he seeks to justify.

This would be consistent with the rules laid down in *Prior v Wilson* (1856) 1 CB (NS) 95 that where a statement contains an innuendo, the words must be justified both in terms of the meaning of the innuendo and as later held in *Watkin v Hall* (1868) LR 3 QB at p 396 in terms of their ordinary and natural meaning.

In *Syarikat Bekalan Air*'s case, the Federal Court ruled:

(1) *Reynold*'s privilege applies to an individual who is not a journalist, provided the requirements of responsible journalism (Lord Nicholls) are met;

(2) in the defence of *Reynold*'s Privilege, the respondent has to prove that responsible and fair steps were taken to gather, verify and publish the information. It is insufficient to merely have an honest belief that the statement(s) were true;

(3) since the *Reynold*'s Privilege defence failed in Syarikat Bekalan Air's case, the Federal Court found it unnecessary to answer this question on the existence of malice; and

(4) on the facts and circumstances of Syarikat Bekalan Air's case, the plea of reasonable grounds for suggesting does not amount to a valid plea for the defence of justification.

The Federal Court dismissed Syarikat Bekalan Air's appeal.

[22] To support his defence, Ramasamy cited:

(a) *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371 (CA) that the ordinary and natural meaning of an impugned statement may include any implication or inference which a reasonable reader, guided not by any special but only general knowledge and not fettered by any strict legal rules of construction would draw from the words;

(b) *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393 (HC) observed that the words complained of must be considered as a whole, bearing in mind, inter alia, the context in which they were used; and

(c) *Duncan v Baird* (2014) 86 WIR 271 (CA, Eastern Caribbean States) had remarked that on the use of metaphors in the law of defamation, the authors of Gatley on Libel and Slander stated that 'it has been said the use of metaphor often distinguishes that comment' and indeed the use of metaphors throughout the brief passage containing the words complained of indeed distinguishes the words as comment and not statements of fact.

[23] In the circumstances:

(a) Ramasamy claimed that the word satan, considered as a whole, was used metaphorically against Dr Zakir for allegedly undermining or mocking other faiths. It should not be taken to label Dr Zakir as a devil or a man of evil;

(b) Ramasamy argued that in pleading justification, what he intended to mean in the first impugned defamatory publication was:

(i) Dr Zakir is a Muslim preacher who delivers hate lectures/speeches (in this context, hate speeches are speeches that tend to denigrate, mock, disparage or encourage violent reactions to particular groups of people based on race, religion, sex, or sexual orientation);

(ii) because of his hate lectures/speeches, Dr Zakir has been banned from delivering lectures in Canada and the United Kingdom;

(iii) the plaintiff had committed a grievous wrong; and

(iv) the plaintiff ought to be deported from Malaysia because of his hate lectures/speeches.

(c) despite Dr Zakir's claims that he has expertise in comparative religions, he does not have academic qualifications in it. He may not have sufficient expertise in the field of comparative religion (Islam, Christianity, and Hinduism). It was established at the trial that he does not have a formal qualification on the subject, as he says he doesn't need it as it is not. He reads only what is required;

(d) Ramasamy:

(i) argued on an incident sometime in September 2012 or in Sri Nagar in 2003 where Dr Zakir was alleged to have made controversial statements in India during the Hindu festival of Vinayaka Chaturthi to honour the birthday of Lord Ganesha;

(ii) Dr Zakir was alleged to have supposedly challenged the Hindus to prove that Lord Ganesha was a deity and further commented, 'If you prove to me that Shri Ganesh is Bhagwaan [God], then I will eat the prasaad [a devotional food offering]' and 'If your 'Bhagwan' [Lord Shiva] cannot recognise his son [Lord Ganesha], how will he recognise me if I fall into any difficulty?';

(iii) he knows that eating prasad is haram;

(iv) in making the above statements, Dr Zakir mocks the Hindu God, Lord Shiva, by questioning how God recognises his followers if they fall into difficulty: NOP, encl 68, p 189;

(v) Ramasamy cited Dr Zakir's lecture on 29 December 2012 at UiTM in Shah Alam, where he again supposedly mocked and insulted Christianity and Hinduism by saying (for ease of reference) as follows:

> When I say, 'I am a Hindu', geographically, I am a Hindu. At At the same time, I say, 'If you say Hindu is a person whom Idol worships', I'm not a Hindu.'
>
> (encl 46, Tab 1, Bundle, 1 p 1589)
>
> ['... there is one God'], but practically they don't follow it. Christianity. They believe in one God, but they say, Father, Holy Spirit, and the Son. They talk about one, but they practically believe in the Trinity. So, Islam is the only religion which speaks and practices Tauhid monotheism. This inspires the person about the one true God unity. Unlike other religions, nowhere can you see that you know that Gods are fighting among themselves; one God is taking the help of another God, and the Devil can defeat the God. So, all these things, a normal person thinks it's illogical. How can God be defeated; how can God die? In some religions, God dies also. So, if God dies, who rules the world? So, when you see all these things, logically people normally blindly follow. These blind beliefs are not there in Islam.'
>
> (encl 46, Tab 2, Bundle 1, p 1590)
>
> '... if there is a contradiction in Veda, then why follow a book which has a contradiction'.
>
> 'If there is a contradiction, then it cannot be the word of God.'
>
> 'I know there are many things which I don't agree with the Veda. I'm not going to tell you about that. Why? Because that will create animosity.'
>
> (encl 46, p 1591)
>
> 'As far as the age of the Veda is concerned, according to Swami Dayananda Saraswati, the Veda is one thousand three hundred and ten million years old. But the majority of the scholar student of Hinduism says the Veda is approximately four thousand years old. Today, the

scholars say we don't know to whom the Veda was revealed. In which part of the world, it came. There are differences. Quran, everything is authentic. Yet, the scholars believe even though we don't know what the exact age of the Veda is, even though we don't know where and which part of the world it came the first time, even though we don't know which stage it came to, yet the Hindus as a whole, they believe Veda to be the most sacred.'

'So, if you get me a scripture which is lower and does not contradict and does not contradict, it cannot overrule the Vedas. And if you tell me that there are verses in the Veda talking about, then there is a contradiction. So, you, as a Hindu, have to try and find where the contradiction is at. No book of Almighty God, if it is in its true form, can have any contradiction'.

'But the present Bible, I can point out hundreds of contradictions.'

'... it even contains pornography. I am sorry to say that. It contains obscene things. So, as a student of comparative religion, I am not here to criticise the Bible.'

'There are certain passages of the Bible I cannot read to you. Even if you give me a million dollars, I cannot read. Even if you give me a million US dollars to me and say, 'read this passage in front of the audience', I cannot. Because my religion doesn't allow me to read obscene things in front of an audience. You understand? But I am not here to degrade the Bible. I am talking about common things. Same thing as the Hindu scripture. As far as the Quran is concerned, its language is so sublime. You can read anywhere in the world. You can read to your wife, you can read to your children, you can read to your father. But certain passages of the Bible I cannot'.

'So here, brother, I have come for communal harmony and based on that, I have done research on the Hindu scriptures, on the Jewish scriptures, on the Christian scriptures. Unfortunately, people of most religions blindly follow what is mentioned by the church and what is mentioned by the temple. What we have to do is we have to ask them for proof.'

(encl 46, Tab 4, Bundle 1, pp 1592–1593)

'This word 'Hindu' was given by the Arabs. The Arabs gave the word 'Hindu' to the people who lived in the land of the Indus. Even today, when I go to Saudi Arabia, they call me Hindi, Hindi. Hindi. So, Hindu is a geographical definition. The word 'Hindu' was given by the Arabs. People living in the land of Indus. So, Hindu is a geographical definition for the people living in the land of the Indus Valley. By geographical definition, I am a Hindu. By geographical definition, I'm a Hindu and a Muslim. Indian Muslim, Hindu Muslim. But if you say Hindu means who believes in worshipping, then I'm not a Hindu. I point to Swami Vivekananda. Hinduism is a misnomer. The right words should be 'Vedantist' because they follow the Vedas. Hinduism is

> a misnomer. It was a word, a title given by the Arabs when they came to India, and today, they also got stuck on it. Even today, when I go to Saudi Arabia, they call me Hindi, Hindi. Yes, I am a Hindi. And I am proud to be a Hindi. But I don't believe in doing idol worship. So, coming to Hinduism, this is a misnomer. The right word is 'Vedantist', or it can be Sanata Dharma. I agree with you. Sanata Dharma believes that God is one and God has no images. Show me one person who is a pure follower of Sanata Dharma who says that God has got an image. That means you have not studied Sanata Dharmana. Have you studied Sanata Dharma?'
>
> (encl 46, Tab 5, Bundle 1, pp 1594–1595)

(e) Ramasamy argued that the above passages allegedly insulted Hinduism and Christianity. Dr Zakir had repeated these statements at the trial. Ramasamy cited:

(i) a news report by the BBC in the UK on 18 June 2010 (nine years before the present suits). Dr Zakir had been prohibited from entering the UK at the time, on alleged unacceptable behaviour;

(ii) a news report by the Toronto Star on 22 June 2010. Dr Zakir had been disallowed to enter Canada;

(iii) a news report in the Livemint ePaper on 19 June 2017: Dr Zakir Naik, invited to Lebanon, faces calls to ban his entry; and

(iv) a news report by the Asia Sentinel on 21 August 2019 claimed Dr Zakir is banned in Bangladesh, Sri Lanka, Singapore, Australia, the UK, Canada, and many Middle Eastern nations.

[24] Therefore, Ramasamy claims that his statement on the ban imposed on Dr Zakir is justified.

[25] Ramasamy also pleaded fair comment on the impugned first defamatory publication and cited *Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor* [2014] 4 MLJ 242, where it was said that if a defendant can prove that the defamatory statement is an expression of opinion on a matter of public interest and not a statement of fact, they can rely on the defence of fair comment. The courts have said that whenever a matter is such as to affect people at large so that they may be legitimately interested in, or concerned at, what is going on or what may happen to them or others, then it is a matter of public interest on which everyone is entitled to make fair comment he is required to prove the following requirements:

(a) the defamatory statements are made based on facts;

(b) the defamatory statements are comments and not statements of facts; and

(c) the defamatory statements involve matters of public interest.

[26] Ramasamy claimed to have such moral or social duty to make the first impugned publication in response to Dr Zakir's alleged insults to the Hindu and Christian faith. It is of public interest. The use of the word satan metaphorically makes it a statement of comments rather than facts.

[27] Ramasamy also claimed qualified privilege to insulate him against the first defamatory publication and cited *Nurul Izzah binti Anwar v Tan Sri Khalid bin Abu Bakar & Anor* [2018] MLJU 472 that had observed that the burden lies on the defendant to establish qualified privilege on which the impugned words were published. It had been addressed earlier that establishing qualified privilege requires two criteria, ie, one, there is a legal, moral, or social duty to make the statement on one side. The other is that there is a corresponding interest to receive it. However, if it is tainted with malice, this defence will not be available (see *Rajagopal v Rajan* [1972] 1 MLJ 45; [1971] 1 LNS 117). For this defence to succeed, the defendant must at least specify the legal, moral, or social duty of the defendant to make such comments:

(a) Ramasamy argued that he had a public or private duty to publish the impugned defamatory statement as the then Deputy Chief Minister II of Penang;

(b) the public had a corresponding interest in receiving the impugned publication of hate lectures/speeches by Dr Zakir; and

(c) he had no malice in making the impugned first defamatory publication.

[28] Considering the parties' respective arguments, and on a balance of probabilities, I find in favour of Dr Zakir, and it is my judgment that Ramasamy has failed to establish his proferred defences to the first defamatory publication:

(a) justification:

(i) the burden is on Ramasamy to establish the truth or substantially the truth of his impugned statements that are defamatory of Dr Zakir. Section 8 of the Defamation Act 1957 is an absolute defence if the requirement is proven: *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 6 MLJ 187 (FC);

(ii) in light of Dr Zakir's evidence above, I cannot see how justification can apply in those circumstances, when the truth or substantially the truth of the statement is proven unfounded at the trial; and

(iii) Ramasamy had, during his evidence, even admitted as much (NOP, Vol 4, p 960, encl 72).

(b) fair comment:

(i) s 9 of the Defamation Act 1957 requires that the impugned defamatory statement be a comment, not a statement of facts. The comment must be based on true facts and is a matter of public interest;

(ii) to reiterate the foregoing, the truth or substantially the truth of the impugned statement is proven unfounded at the trial;

(iii) evidently, the impugned statement is not a comment in its present form. It is an instigation premised on an assumed statement of facts from unsupported sources;

(iv) on using satan to vilify Dr Zakir, Ramasamy admitted that the word does not constitute a fair comment (NOP, Vol 4, p 959, encl 72);

(v) Dr Zakir cited *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli* [2022] 3 MLJ 758; [2022] 5 CLJ 487 (FC) that observed it is important as the first task to ascertain whether the impugned statement is a statement of fact or is it the respondent's opinion and inferences made from the facts. The necessity to decide this is fundamental to determine whether the defence of fair comment is available to the respondent. This is because 'if the imputation is one of fact, the defence must be justification or privilege' (see *Gatley on Libel and Slander* (11th Ed, Sweet and Maxwell, 2008) and therefore, the respondent could not rely on the defence of fair comment'; and

(vi) the presence of malice on the part of Ramasamy would disentitle the defence.

(c) qualified privilege:

(i) in *Chew Peng Cheng v Anthony Teo Tiao Gin* [2008] 5 MLJ 577; [2008] 8 CLJ 418 (HC) says that:

(1) the defence of qualified privilege needs two criteria, ie, one, there is a legal, moral, or social duty to make the statement on one side. The other is that there is a corresponding interest to receive it. However, if it is tainted with malice, this defence will not be available (see *Rajagopal v Rajan* [1972] 1 MLJ 45; [1971] 1 LNS 117); and

(2) for this defence to succeed, the defendant must at least specify the legal, moral, or social duty of the defendant to make such comments. The defendant has failed to establish this in the present case satisfactorily. This was not stated either in his defence or in his submissions.

(ii) it requires that the impugned statement was made without malice: *YB Dato' Dr Hasan bin Mohamed Ali lwn YB Mulia Tengku Putra bin Tengku Awang dan lain-lain* [2010] 8 MLJ 269; [2010] 7 CLJ 856 (HC)

espoused the three elements required: (1) the occasion must be fit; (2) it has reference to the occasion; and (3) it must be honest and for the right reason (no malice); and

(iii) evidently, from the foregoing paragraphs, the defence does not apply. The Federal Court in *Dato' Dr Low Bin Tick v Datuk Chong Tho Chin and other appeals* [2017] 5 MLJ 413; [2017] 8 CLJ 369 (FC) observed that:

(1) malice is a necessary element in an action for libel. The law prevents the inference of malice in the publication of statements which are false in fact and injurious to the character of another if such statements are fairly made by a person in the discharge of some public or private duty, whether legal or moral or in the conduct of his affairs, in matters where his interest is concerned;

(2) it affords a qualified defence depending on the absence of actual malice (see *Toogood v Spyring* (1834) 1 CM & R 181; [1834] EngR 363; [1834] 1 Cr M & R 181; [1834] 149 ER 1044);

(3) *the prima facie defence of qualified privilege is not available if it is shown that a defendant has been actuated by actual or express malice or if he has used the occasion for some indirect or wrong motive*; and

(4) since I have determined that Ramasamy was malicious in targeting and vilifying Dr Zakir, this defence will also be denied.

[29] Considering the relevant evidence at the trial:

(a) the use of the term satan could never be in an illustrative manner or metaphorically in the circumstances of the case, and I find such an argument misconceived and misplaced. It is a maliciously derogatory terminology against anyone. I agree with the finding of the court in *Dr Ong Keh Ong v Loke Hon Mun & Ors* [2023] MLJU 349; [2023] 1 LNS 112 (HC) that it has the effect of lowering the plaintiff in the estimation of the general public. It smacks of malice with the use of the word satan. Fair comment and qualified privilege must be denied. There are sufficient plethoras of authorities;

(b) it was not refuted at the trial that Dr Zakir is an autodidact (a self-taught person) who is already an accomplished and renowned speaker on comparative religion for many years. I find no compelling evidence by Ramasamy to refute it save for suggestive assertions to discredit Dr Zakir. Conjectures and speculation have no probative value;

(c) I accept Dr Zakir's assertion that there is no legal requirement that to be an expert in comparative religion, one must be formally educated with a paper qualification;

(d) I like to borrow the rationale of Albert Einstein:

> Many people think that the progress of the human race is based on experiences of an empirical, critical nature, but I say that true knowledge is to be had only through a philosophy of deduction. For it is intuition that improves the world, not just following a trodden path of thought. Intuition makes us look at unrelated facts and then think about them until they can all be brought under one law. To look for related facts means holding onto what one has instead of searching for new facts. Intuition is the father of new knowledge, while empiricism is nothing but an accumulation of old knowledge. Intuition, not intellect, is the 'open sesame'of yourself.
>
> It is an accepted reality in the knowledge world that a person's enlightenment is not attested by a piece of paper that says he has successfully completed the desired course. That cannot be the benchmark to authenticate a person's knowledge. Therefore, I find Ramasamy's assertion on Dr Zakir's lack of formal education is a non-starter;

(e) it is my considered judgment, taking the evidence in its totality, that Dr Zakir's statements or speeches have been unnecessarily dissected into pieces and taken out of their intended context to skew an adverse view of the man, which is unjust in the circumstances. I have no reason to disbelieve Dr Zakir's explanation of the Hindu Vinayaka Chaturthi festival. His answers were sliced up, distorted, and isolated to skewed negativity of the man. From the evidence, I also find no reason to disbelieve Dr Zakir's explanation of the UiTM lecture in Shah Alam in 2012;

(f) there is no compelling evidence by Ramasamy that Dr Zakir had indeed been banned in Canada. Even the purported ban in the UK had long passed in 2013 and is out of context and overstretching for the present argument by Ramasamy;

(g) I have read the full text of his speeches and concluded that Dr Zakir wanted answers to questions in a discourse that he posed that never came. His question may be brash, or appear harsh, but in all fairness, I find it was objectively made in seeking answers and clarity. It was on occasions of a comparative intellectual discourse as claimed. Dr Zakir had often said that if someone qualified and knowledgeable can prove him wrong, come forward and correct him, as he is willing to be educated;

(h) however, from the evidence at the trial, there was none, but only distant, defamatory bashing on social media and online platforms by taking his speeches entirely out of context. In *Mohamed Hafiz Mohamed Nordin v Eric Paulsen and another appeal* [2019] 1 MLJ 580; [2018] 8 AMR 558 (CA), the Court of Appeal reverses the finding of the High Court in

holding that the impugned statement was derogatory, calculated to incite hatred and anger amongst the multi-religious groups and ethnicities in Malaysia. The impugned statement not only described the plaintiff as a fraudster, a liar who incited hatred of the Islamic religion, but also as a person funded and supported by foreign entities, such as the United States of America and the European Union. In their natural and ordinary meaning, the impugned statement meant and was understood to mean by reasonable and ordinary readers of the article that the plaintiff was anti-Islam. The article had only one purpose: to tarnish the plaintiff's character and reputation. The Court of Appeal granted damages of RM100,000;

(i) there is no evidence that someone (including Ramasamy) had actually confronted and taken Dr Zakir directly on his questions for intellectual discourse to prove him wrong or put him in his place. After all, as claimed by Ramasamy at the trial, Dr Zakir has no formal education on the subject. Then it shouldn't be too difficult a task. Unlike the UK (the Defamation Act 2013 (UK), the plaintiff must prove harm has been caused), in Malaysia, defamatory statements made on social media are regarded as libel, as held by the court in *Tony Pua Kiam Wee v Dato' Sri Mohd Najib bin Tun Hj Abdul Razak* [2018] 4 MLJ 192; [2018] 3 CLJ 522 (CA). It is libel actionable *per se,* so there is no need to prove actual damage suffered due to the defamatory statement: The Law on Defamation Relating to Social Media, Wong Sue Ann and Raymond Mah, https://mahwengkwai.com;

(j) in *Datuk Seri Anwar bin Ibrahim v Wan Muhammad Azri bin Wan Deris* [2014] 9 MLJ 605 (HC), the plaintiff filed a defamation lawsuit against the defendant (a blogger known as 'Papa Gomo'), seeking RM100m in damages over blog postings linking him to a sex scandal. In his statement of claim, the plaintiff alleged that the postings implied he was immoral and unqualified to hold public office. The plaintiff claimed that the postings had damaged his reputation and caused him and his family to suffer. The defendant denied that he was 'Papa Gomo'. The High Court took judicial notice that the Internet is used worldwide. The court said the defamatory statements were published online, and 'people worldwide can access the website … there was a wide publication of the defamatory statements'. The court declared that the defendant was indeed 'Papa Gomo' and ordered him to pay the plaintiff RM800,000 in damages and an additional RM50,000 in costs. The defendant appealed;

(k) on 4 December 2015, the Court of Appeal held, dismissing the appeal, that the High Court had not erred in its decision that Papa Gomo and

Wan Muhammad Azri were indeed the same person. The appellant (defendant) was also ordered to pay RM10,000 in costs to the respondent (plaintiff);

(l) I have no hesitation in finding that Ramasamy's impugned first defamatory publication is a personal attack on Dr Zakir. The libellous or slanderous calling of any person a satan is undoubtedly defamatory as it is derogatory of the target's character. The hostility in the impugned statement towards Dr Zakir is evident and very personally targeted;

(m) the impugned statement is an apparent public instigation to turn the Malaysian public, mainly Hindu/Indian NGOs, against Dr Zakir. Ramasamy's demeanour and intent on vilifying Dr Zakir with those unfounded allegations (without at all verifying the source) in the first impugned defamatory publication manifest malice that would automatically disqualify the defences he proferred over his conduct. There was no truth or substantial truth in the impugned statements of the first defamatory publication;

(n) contrary to the position taken by Dr Zakir, I find that Ramasamy did not offer any formal apology directed personally to Dr Zakir for that personal attack. I can find no such compelling evidence at the trial. The term regret carries a different connotation to an apology. A person can regret (feel sad, repentant, or disappointed over an action) without even considering apologising. As I have said, I find no evidence of an express apology other than the label placed by the publisher of the articles. That said, however, it goes to the credibility and character of Ramasamy. It shows no remorse or genuine regret over the impugned defamatory publication, even though it was admitted that it was a derogatory publication and proven unsupported: *Chong Swee Huat & Anor v Lim Shian Ghee (t/a L & G Consultants & Education Services* [2009] 3 MLJ 665 (CA);

(o) it is my considered judgment that this untoward provocation could have resulted in unnecessary public unrest. I find such conduct highly irresponsible and reprehensible for a person holding high office in the government (Deputy Chief Minister II of Penang at the time);

(p) the defamatory elements of the statement are proven, and so is the publication of that impugned statement. I am inclined to believe on the balance of probabilities, as claimed by Dr Zakir, that the impugned defamatory publication carries adverse imputations on Dr Zakir as: (i) an evil man; (ii) he is a cause of disharmony among the multiracial citizens of Malaysia; (iii) the Terengganu State Government made a huge mistake by inviting him to lecture in Terengganu; (iv) he is not an honest Muslim preacher in propagating the teachings of Islam; and (v) he had committed an offence or offences in other countries, including Canada

and the United Kingdom. In *Hassan & Anor v Wan Ishak & Ors* [1961] 1 MLJ 45 (CA), Thompson CJ observed that it is sufficient if the plaintiff proves the substance of it;

(q) on the totality of the evidence, Ramasamy's preferred defence failed in light of the adverse evidence on the first impugned defamatory publication. It cannot exonerate him from liability over this publication. I am guided by the Federal Court *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 6 MLJ 187 (FC) and I also find Ramasamy had failed the responsible journalism test since he admitted at the trial that he did not take fair steps to gather, verify and publish the impugned defamatory publication; and

(r) on using the *Lucas-Box* justification in his submissions, I have examined Ramasamy's pleaded defence (Suit 53) and hold that the evidence at the trial does not fit his pleaded defence and is unproven at the trial on the first defamatory publication. The suggested meaning ascribed by Ramasamy is not appropriately pleaded and proven in his defence. I find it an afterthought. He anchored his pleaded defence on s 8 of the Defamation Act 1957 in para 7 for justification and s 9 for fair comment in paragraph 8 for Suit 53. In addition, the existence of malice denies Ramasamy the pleaded defence for the first defamatory publication.

SECOND DEFAMATORY PUBLICATION

[30] On 1 October 2017, approximately 18 months after the first debacle, Dr Zakir asserted that Ramasamy libelled him in a second defamatory publication in an article that he penned 'Is Malaysia harbouring alleged fugitive Zakir Naik?' (refer para 7(a) above), intending for it to be widely circulated on the FMT news portal.

Dr Zakir argued that:

(a) the second impugned defamatory publication is a hateful and unfounded personal attack. The offending article carries damaging and disparaging connotations and imputations that cast baseless aspersions on Dr Zakir; and

(b) in authoring the offending article, from the evidence at the trial, Ramasamy sourced the materials from the internet without verifying the truth of the information he wrote. He could not provide compelling evidence of his allegations in the offending article.

[31] At the trial:

(a) Ramasamy admitted he penned the offending article on the FMT news

portal. Dr Zakir cited *Nurulhudda Nazlin bin Hussin v Mohd Faisal bin Shamsuddin* [2022] MLJU 1114; [2022] 1 LNS 1189 (HC) that observed in that case that the defendant, by his admission, published the impugned words to push the JMB to take action on certain matters or to resign from their posts. This is where the pen is mightier than the sword, where false allegations will bring the plaintiff into disrepute, and society will shun him to achieve his purpose. The defendant did not apologise in this case. Dr Zakir cited *Dato' Wan Hashim bin Hj Wan Daud v Mazlan bin Ibrahim & Anor* [1998] 1 MLJ 176; [1997] 5 CLJ 140 that observed to determine whether the impugned words were capable of being, or were, fact, defamatory of the plaintiff:

(i) the test to be considered is whether such words were calculated to expose him to hatred, ridicule, or contempt in the mind of a reasonable man or would tend to lower the plaintiff in the estimation of right-thinking members of society generally; and

(ii) if the words have such a tendency, they could still be defamatory even if they did not lower a plaintiff in the estimation of those to whom they were published.

(b) Ramasamy did not deny that he did not verify the facts with Dr Zakir, nor does he have any evidence to support his writing before publishing the offending article (NOP p 1029 encl 72):

(i) Interpol did not issue any Red Notice on Dr Zakir, even though requested by the Indian government on allegations of terrorism, hate speech, and money laundering;

(ii) Interpol had issued a certificate (1 December 2017) that Dr Zakir is not subject to an Interpol Red Notice or diffusion and is not known in Interpol's databases (Part B, encl 40, p 1289);

(iii) Interpol certificate (5 August 2019) confirms that Dr Zakir is not subject to an Interpol Red Notice or diffusion (Part B, encl 40, p 1290);

(iv) Interpol certificate confirms that Dr Zakir is not subject to an Interpol Red Notice or diffusion;

(v) Interpol's letter cleared Dr Zakir;

(vi) that clears Dr Zakir from any unfounded allegations of being an alleged 'fugitive', 'suspected terrorist activities', 'links with the underworld', plaintiff's preaching 'had something to do with terrorist attacks in a cafe in Dhaka', 'instigating some youths in Kerala to take part in ISIS', 'links with Mumbai's underworld' and 'suspected criminals who come in the guise of religious scholars and preachers' etc (Part B, encl 40, pp 1197–1199);

(vii) it was established at the trial that whatever investigation by the National Investigation Agency of India died down as there was no plausible evidence on the allegations (SEPW1, encl 57, p 37);

(viii) Ramasamy conceded at the trial that the foregoing renders his allegation in the offending article unsupported. They are all baseless (NOP, encl 72, pp 1013–1014);

(ix) notwithstanding the foregoing, Ramasamy remained defiant and refused to withdraw the offending article or take corrective measures for the injury it caused Dr Zakir. It is an apparent reflection of the intent on the part of Ramasamy in the second impugned defamatory publication;

(x) on Ramasamy's allegation of Dr Zakir's alleged connection with the Dhaka attack and ISIS:

(1) Dr Zakir vehemently denied it;

(2) it was established at the trial before publishing the offending article that Ramasamy did not seek any verification from Dr Zakir (NOP, encl 72, p 1040);

(3) Dr Zakir clarified the position in his re-examination; and

(4) concerning the malicious allegation by Ramasamy of Dr Zakir's involvement in the terror attack in Dhaka, Ramasamy conceded that the Bangladeshi government never requested the extradition of Zakir Naik (NOP, encl 72, pp 977–978).

(xi) Dr Zakir cited *Abd Kudus Ahmad v Datuk M Kayveas & Anor* [2014] 1 LNS 1396 that observed in that case that the defendants were not entitled to report the unproven allegations of corruption against the plaintiff in such a manner as to show that there was sufficient evidence against the plaintiff, ie, in the form of a clear prejudgment of the plaintiff's guilt;

(xii) the allegation concerning IRF, and money laundering is entirely groundless:

(1) not only did Interpol clear Dr Zakir, but the Indian Appellate Tribunal had also disallowed the Enforcement Directorate from seizing Dr Zakir's properties (SEPW1: encl 57, pp 10–11);

(2) Mr Justice Manmohan Singh determined that there was no evidence linking Dr Zakir to money laundering and inciting youths to engage in violent activities; and

(3) the justice found nothing objectionable in Dr Zakir's speeches (Part B, encl 40, pp 1202–1206).

(c) the offending article explicitly refers to Dr Zakir and has garnered

widespread publication. There can be no dispute to that:

(i) there was no professionalism in authoring the offending article that had defamed Dr Zakir;

(ii) *Lim Guan Eng & Anor v New Straits Time Press (M) Berhad & Anor* [2015] 1 LNS 1140 was cited in addressing the application of the *Reynold*s privilege for responsible journalism;

(iii) the court, in that case, observed that the tone and the language of the said article were reported in professional language (such as the title of the article only used the word 'Indian-interest group claims thugs interrupted meeting') with no sensationalising made to both the personalities (SP1 and SP2) as what *Malaysiakini* did;

(iv) also, in that case, the defendant used the words 'claims ' and 'believed ' in the article, which indicates responsible journalism;

(v) unlike in the instant case, evidently, no professionalism was applied in authoring the offending article that personally targeted Dr Zakir. It was maliciously published to injure Dr Zakir; and

(vi) the principles that can be distilled from *Lim Guan Eng*'s case are:

(1) the offending article could have adverse connotations or imputations against the plaintiff that leave a direct impression in the reader's mind;

(2) the offending article tends to lower the plaintiff in the approximation of right-thinking members of society;

(3) the offending article is thus defamatory of the plaintiff; and

(4) the late Gopal Sri Ram in *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371 observed that do the words published in their natural and ordinary meaning attribute to the plaintiff any dishonourable or discreditable conduct or motives or lack of integrity on his part? If the question invites an agreeing response, then the words complained of are defamatory, citing *JB Jeyaretnam v Goh Chok Tong* [1985] 1 MLJ 334 Richard Malanjum J in *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393.

[32] Ramasamy pleaded justification, fair comment, and qualified privilege as his defences to the second defamatory publication. It was established at the trial that Ramasamy's source of allegations in the offending article was grounded on unverified online Indian sources.

[33] Ramasamy did not dispute the publication, but as with the first

defamatory publication, he repeated the *Lucas-Box* justification for the second impugned defamatory publication. He argued that the meaning he reasonably ascribed to the impugned statements in their natural and ordinary meaning is inconsistent with the defamatory meanings taken by Dr Zakir. Ramasamy meant:

(a) that the plaintiff was one of India's most wanted fugitives;

(b) that the plaintiff was wanted in India for suspected terrorist-related activities and links to the Indian underworld, including Dawood Ibrahim, one of India's most wanted criminals;

(c) the allegations were also that funds from Dawood Ibrahim's underworld activities were used to finance the IRF;

(d) if that were the case, it would not augur well for diplomatic relations between India and Malaysia;

(e) Malaysia should extradite Indian fugitives, including the plaintiff, to India and vice versa;

(f) that the plaintiff appeared to be in Malaysia despite apparent denials by the then Deputy Home Minister of Malaysia;

(g) it therefore appeared that Malaysia was harbouring the plaintiff. Malaysia should not harbour the plaintiff;

(h) Malaysia should come clean on the presence or otherwise of the plaintiff in Malaysia;

(i) allegations had been made in India that the plaintiff's preaching had something to do with the terrorist attacks in Dhaka and had instigated some youths in Kerala to take part in ISIS activities; and

(j) while Malaysia had taken a tough stand about ISIS, it harboured the plaintiff.

[34] Ramasamy pleaded justification for the second defamatory publication:

(a) the Dhaka attack on 1 July 2016 was widely reported, resulting in the death of civilians and security forces. Dr Zakir was alleged to have influenced the attackers;

(b) Dr Zakir admitted in his evidence that he was accused of allegedly being linked with the Dhaka Attack on the allegation that his teachings influenced the attackers;

(c) on 7 July 2016, the Hindustan Times reported that the Indian government was launching a probe on Dr Zakir as a consequence thereof.

Probes on his speeches and request by an MP for a probe on the funding of his organisation IRF (Islamic Research Foundation), the banning of IRF;

(d) India's Solicitor General on 30 August 2016 urged the government to take action against Dr Zakir. Sometime in November 2016, the Indian Government banned IRF for five years;

(e) the authorities had lodged an investigation of suspected money laundering against Dr Zakir and IRF;

(f) on 27 February 2017, the Indian authorities summoned Dr Zakir to return to India to face the money laundering probe. Finally, an arrest warrant was issued in India on 13 April 2017 for Dr Zakir's refusal to attend the probe; and

(g) Dr Zakir's:

(i) refusal to appear in the probe resulted in the authority declaring him a 'proclaimed offender' under s 82 of the India Criminal Procedure Code;

(ii) his Indian Passport was revoked on 18 July 2017;

(iii) on 12 October 2018, the Indian authority ordered the attachment of properties belonging to Dr Zakir;

(iv) a charge sheet was filed by the Indian authority against Dr Zakir on 26 October 2017, and they wanted him to return;

(v) on 14 October 2019, the India Times reported that Dr Zakir and two hardline preachers of Pakistan were involved in a love jihad case, where one of the individuals involved was radicalised and forced into Islam; and

(vi) subsequently, Dr Zakir moved to Malaysia and was granted permanent resident status in 2016. Therefore, Ramasamy argued it is an issue whether Malaysia is harbouring Dr Zakir, who is wanted in India.

[35] Ramasamy pleaded fair comment on the second defamatory publication:

(a) from the foregoing facts, it is clear that the Malaysian government has refused to extradite Dr Zakir to India. As the then Deputy Chief Minister II of Penang, Ramasamy has a social and moral duty to publish the impugned defamatory statement as a matter of public interest; and

(b) taken as a whole, the second defamatory statement is an opinion or comment of Ramasamy grounded on true facts on the issue and not a statement of fact.

[36] Ramasamy also pleaded qualified privilege on the second defamatory publication.

(a) he argued that there can be no doubt that there was a reciprocal interest between him and the Malaysian public receiving the impugned statement concerning the Malaysian government harbouring Dr Zakir, a wanted man in India; and

(b) the impugned statement was made for the welfare of Malaysian society, and Ramasamy should be protected by qualified privilege.

[37] Considering the totality of the evidence and parties' respective arguments, and on the balance of probabilities, I also find in favour of Dr Zakir, and it is my judgment that Ramasamy has failed to establish his proferred defences to the second defamatory publication:

(a) justification:

(i) the burden is on Ramasamy to establish the truth or substantially the truth of his impugned statements that are defamatory of Dr Zakir. Section 8 of the Defamatory Act 1957 is an absolute defence if the requirement is proven. It is incumbent on Ramasamy to prove the truth or substantially the truth of his impugned statement in the offending article: *Loh Li Sze v Eugene Chong Haou Inn & Anor* [2023] MLJU 1797; [2023] 1 LNS 1620;

(ii) in light of the evidence in the foregoing paragraph, I cannot see how justification can apply when the truth or substantially the truth of the statement is proven unfounded at the trial when his allegation was successfully debunked; and

(iii) during his evidence, Ramasamy even admitted that his offending article is based on unverified sources (NOP, encl 72, pp 975–976, p 979, encl 72).

(b) fair comment:

(i) s 9 of the Defamation Act 1957 requires that the impugned defamatory statement be a comment, not a statement of facts. The comment must be based on true facts and is a matter of public interest;

(ii) to reiterate the foregoing, the truth or substantially the truth of the impugned statement is proven unfounded at the trial;

(iii) evidently, the offending article is not a comment in its present form. As with the first defamatory publication, it is also a provocation premised on an assumed statement of facts from unsupported sources that Dr Zakir had successfully debunked at the trial;

(iv) Dr Zakir cited *Chew Mei Fun lwn Tony Pua Kiam Wee dan satu lagi* [2023] MLJU 1514; [2023] 1 LNS 1357 that held:

(1) to establish fair comment, it must be proven that the statement expresses an opinion grounded on truthful facts;

(2) obviously, the offending article by Ramasamy is not an expression of an opinion. It is not anchored on the truth or substantial truth of the matter.;

(3) as rightly cited by Dr Zakir, *Abd Kudus Ahmad v Datuk M Kayveas & Anor* [2014] 1 LNS 1396 had observed that the defendants were not entitled to report the unproven allegations in the form of a clear pre-judgment of the plaintiff's guilt; and

(v) the presence of malice on the part of Ramasamy in the circumstances would disentitle the defence.

(c) qualified privilege:

(i) Ramasamy claimed he was under a moral and social duty to communicate the words complained of, and the public at large had a corresponding interest in receiving the information. Dr Zakir disagreed and said the public had no corresponding interest but only the police or the authorities. Citing *Dr Chong Eng Leong v Tan Sri Harris bin Mohd Salleh* [2017] 4 MLJ 611; [2017] 10 CLJ 657 that observed:

(1) a defendant's conduct in publishing material giving rise to a defamatory imputation will not be reasonable unless the defendant had reasonable grounds for believing that the imputation was true, took proper steps, so far as they were reasonably open, to verify the accuracy of the material and did not believe the imputation to be untrue; and

(2) in the present case, Ramasamy admitted at the trial that he never took any steps to verify the contents of his article that vilified Dr Zakir when contemporaneous documents were available to debunk his defamatory allegations.

(ii) to reiterate *Chew Peng Cheng v Anthony Teo Tiao Gin* [2008] 5 MLJ 577; [2008] 8 CLJ 418 (HC) that, the defence of qualified privilege needs two criteria, ie, one, there is a legal, moral, or social duty to make the statement on one side. The other is that there is a corresponding interest to receive it. However, if it is tainted with malice, this defence will not be available (see *Rajagopal v Rajan* [1972] 1 MLJ 45; [1971] 1 LNS 117);

(iii) evidently, from the foregoing paragraphs, the defence does not apply. The defence of qualified privilege is not available if it is shown that a defendant has been actuated by actual or express malice or if he has used the occasion for some indirect or wrong motive: *Dato' Dr Low Bin Tick v Datuk Chong Tho Chin and other appeals* [2017] 5 MLJ 413; [2017] 8 CLJ 369 (FC). Since I have determined that Ramasamy was malicious in targeting and vilifying Dr Zakir, this defence will also be denied.

[38] Considering the evidence at the trial:

(a) Dr Zakir, in his evidence (NOP, encl 71, pp 704–706), clarified that:

(i) the first time the Indian authority charged him was for promoting terrorism. To get the Interpol Red Notice, they needed to file the charge. Interpol denied it for lack of evidence in connecting Dr Zakir to terrorism. So, the Indian authority issued a warrant for this;

(ii) the second time, the Indian authority laid charges for giving hate speeches and was asked to attend the probe. Since he was away, he agreed to a video conference, as I didn't trust my safety with the Indian authority. They issued a second warrant;

(iii) for the third time, the Indian authority laid charges for money laundering to get the Red Notice from Interpol. Interpol denied it for want of evidence connecting him to money laundering. So, the Indian authority issued a third warrant;

(iv) the fourth time, the Indian authority proceeded under the Prevention of Money Laundering Act (PMLA) to attach his properties. A warrant was issued. When the matter came up before the High Court, Justice Manmohan Singh chided the Indian authority that he had seen hundreds of Dr Zakir's lecture videos, and they could not produce one video of his lecture where he promoted terrorism. Justice Manmohan Sing denied the application;

(v) Dr Zakir asserts that he has never been convicted of these charges in India or any other country. Never in his life has he been convicted of a crime; and

(vi) He takes these defamatory actions against Ramasamy because he has maligned him the most.

(b) at the trial, Ramasamy, in his evidence, did not raise any objection to Justice Manmohan Sing's comment. He agreed that Interpol did not accept the Indian authority's version of the story on Dr Zakir;

(c) Ramasamy also acknowledged at the trial in his evidence that Interpol had cleared Dr Zakir from charges of terrorism, hate speech and money laundering in its decision on 26 October 2018, 2 July 2019, and 26 January 2021 (NOP, encl 72, pp 1078–1079). In his evidence, Ramasamy also acknowledged that Interpol found the charges against Dr Zakir baseless (NOP, encl 72, pp 1013–1014);

(d) Ramasamy also acknowledged that in his evidence at the trial, Dr Zakir was in Malaysia lawfully and was also a guest of the Government of Qatar (NOP, encl 72, p 1082). The term fugitive has no application in this context;

(e) Dr Zakir, in his evidence, argued that contrary to the allegation of Ramasamy that he was a fugitive, he equates his relocation to *hijrah* to ensure the preservation of his life from an oppressive authority (NOP encl 87, pp 1158–1160);

(f) Dr Zakir denied any involvement in the Dhaka terrorist attack that Ramasamy linked him to. It was established at the trial that Ramasamy never attempted to clarify the story before publishing it. Ramasamy admitted that notwithstanding the allegations, the Bangladeshi government never made any request to extradite Dr Zakir to Bangladesh (NOP, encl 72, pp 977–978);

(g) this second defamatory publication is also a targeted personal attack on the personality of Dr Zakir, 18 months after the first debacle. In light of the evidence at the trial, I agree with Dr Zakir that the offending article by Ramasamy is defamatory. It carries adverse connotations;

(h) the degree of hostility shown by Ramasamy towards Dr Zakir in the offending article has not abated since the first debacle 18 months earlier. The offending article is constructed to rile up the Malaysian public against Dr Zakir and is grounded on unverified sources of information in Ramasamy's offending article;

(i) he did not attempt to get Dr Zakir's side of the story before publishing the offending article, as a responsible author would in authoring such an adverse piece on another;

(j) in such circumstances, Ramasamy must be held accountable, and he has failed the responsible journalism test cited in *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 6 MLJ 187 (FC);

(k) it is my considered judgment that the display of lack of objectivity by Ramasamy manifests malice on his part. It is not concerned with the truth of the materials in the offending article but only that it garners widespread notoriety of Dr Zakir irrespective of the integrity of the information that the article contained;

(l) the presence of malice would automatically disqualify the defences he is proffering to the court over his conduct. There was no truth or substantial truth in the impugned statements of the second defamatory publication;

(m) even after his allegations in the article were successfully debunked at the trial, he showed no remorse or regret. As with the first defamatory publication, this reflects upon his demeanour. I find such conduct highly irresponsible and reprehensible for a person holding high office in the government (Deputy Chief Minister II of Penang at the time);

(n) on the totality of the evidence, I find Ramasamy's preferred defence hardly tangible in light of Dr Zakir's evidence on the second impugned defamatory publication. I am unconvinced of his arguments to exonerate himself; and

(o) on the plea of the *Lucas-Box* justification on the second defamatory publication, considering Ramasamy's pleaded defence (Suit 53), I hold that the evidence at the trial does not fit his pleaded defence. The suggested meaning ascribed by Ramasamy is not appropriately pleaded in his defence and is unproven at the trial. I find it an afterthought. He anchored his pleaded defence on s 8 of the Defamation Act 1957 in para 16 for justification and s 9 for fair comment in para 17 for Suit 53. In addition. The existence of malice denies Ramasamy the pleaded defences.

[39] The third and fourth defamatory publication arises from a public lecture Dr Zakir was invited to give in Kelantan on 8 August 2019:

[40] Third defamatory publication:

On 11 August 2019, approximately 22 months after the second debacle, Ramasamy penned another article, 'Naik Should Not Question the Loyalty of Hindus in Malaysia (refer para 8(a) above). Ramasamy admitted during the trial that he did publish the offending article on the FMT news portal on 11 August 2019;

[41] Fourth defamatory publication:

On 20 August 2019, approximately nine days after the third defamatory publication, Ramasamy gave an online interview with India Today (Zakir Naik Crackdown Penang Deputy CM Exclusive Interview with India Today on Zakir Ban) and slandered Dr Zakir. The interview has been transcribed, in a nutshell (refer para 9(a) above);

[42] At the trial:

(a) there is no issue that both the third and fourth defamatory publications referred to Dr Zakir since he had been explicitly named in both publications. Ramasamy did not dispute at the trial that the impugned publications refer to Dr Zakir;

(b) Dr Zakir argued that the third and fourth defamatory publications carry adverse imputations against him. He cited *Roslan bin Ali v The New Straits Times (M) Bhd & Anor* [2017] MLJU 1385; [2017] 1 LNS 1356, which observed that statements or words were defamatory if they tended to lower the plaintiff in the estimation of right-thinking men or if they would expose him to hatred, contempt or ridicule or cause him to be shunned or avoided. It was argued that Ramasamy:

(i) had made baseless allegations against Dr Zakir that are factually incorrect concerning the Hindus and Chinese;

(ii) Ramasamy had sensationalised the alleged fugitive status of Dr Zakir in this country when the same is untrue;

(iii) accused Dr Zakir of having carried out a mischievous comparative perspective on religion that had created tension between Muslims and non-Muslims in Malaysia; and

(iv) Ramasamy had labelled Dr Zakir as poison, venom, fraudster, or trickster.

(c) in his evidence, Dr Zakir:

(i) negated the allegations labelled at him on the Hindus' issue by giving a press release on 13 August 2019 to clear the smear campaign to vilify him (Part B, encl 35, pp 32–34);

(ii) Dr Zakir asserted that he never used the word loyal as suggested in the defamatory publications; the word used was support, which bears a different connotation; and

(iii) it was badly misquoted and twisted out of context to skew support for Ramasamy's third and fourth defamatory publications.

(d) in his evidence, Dr Zakir (SEPW1 (A), encl 52, pp 24–27):

(i) negated the allegations labelled at him on the Chinese issue by giving a press release on 8 August 2019 to clear the smear campaign to vilify him (Part B, encl 35, pp 35–37);

(ii) Dr Zakir asserts he is a man of peace out on a mission to spread peace and truth;

(iii) but a few hate-mongers, many with political agendas, want to

A disrupt his mission by misquoting and fabricating information against him; and

(iv) information received ought to be verified before acting on it.

B (e) there was never any issue of insulting the Hindus or the Chinese, as alleged by Ramasamy in the third and fourth defamatory publications;

(f) these press releases did not elicit any rebuttal from Ramasamy to challenge the clarification by Dr Zakir (NOP, encl 72, pp 1043–1045). It reflects adversely on the purported truth of Ramasamy's unfounded C allegations in the third and fourth defamatory publications;

(g) on Ramasamy's allegation calling for the deportation of Dr Zakir, it was argued that:

D (i) on 21 August 2019, Tun Mahathir Mohamad, the PM at the time, issued a statement, reported in the Metro that the PM of India did not make any request for the deportation of Dr Zakir to India (Part B encl 40, pp 1287–1288);

E (ii) on 21 August 2019, Datuk Seri Ahmad Samsuri Mokhtar, MB of Terengganu, issued a statement captured by Metro that pressure from some parties, including several cabinet ministers, to deport Dr Zakir must be accompanied by concrete arguments to ensure justice is observed (Part B, encl 40, pp 1260–1261);

F (iii) on 16 August 2018, Berita Harian reported the Chairman of the People's Justice Party of Terengganu, Azan Ismail, saying that Dr Zakir should not be presumed a threat to society as the racial statements are only his personal views (Part B, encl 40, pp 1242–1243);

G (iv) on 16 August 2019, the Mufti of Pahang, Datuk Seri Abdul Rahman Osman, was reported by Metro as saying that he disagrees with certain parties wanting to deport Dr Zakir as he did not divide the people but only explained the truth about Islam (Part B, encl 40, p 1245); and

H (v) on 15 August 2018, FMT reporters quoted the President of Pas, Tuan Guru Dato Seri Abdul Hadi Awang, as saying that Dr Zakir's critics are not qualified to question his credentials to speak on comparative religion (Part B, encl 40, pp 1240–1241).

Ramasamy elected not to refute these arguments but continued I ranting for the deportation of Dr Zakir. In his evidence, Ramasamy acknowledged that he knew that the PM of India never requested the deportation of Dr Zakir from Tun Mahathir before publishing the third and fourth defamatory publications (NOP, encl 72, pp 1022–1023);

(h) Dr Zakir denies any allegation that his speeches created disharmony and tensions between Muslims and non-Muslims, as alleged; and

(i) it is not an issue that the impugned third and fourth defamatory publications, such as FMT and India Today.

[43] Ramasamy pleaded justification, fair comment, and qualified privilege as his defences to the third and fourth impugned defamatory publications.

Ramasamy:

(a) doesn't dispute the publication of the third and fourth defamatory publications. Similarly, he argues that the impugned publications are not defamatory of Dr Zakir. He argued that what Dr Zakir understood was not what he had ascribed to the two impugned defamatory publications. The alleged alternative meanings ascribed by Ramasamy in its natural and ordinary reading:

(i) third defamatory publication:

(1) that the plaintiff is a fugitive from India who is evading legal action for charges pertaining to money laundering and terrorist-related attacks;

(2) that the plaintiff has insulted and belittled religions other than Islam in Malaysia, on the pretext of engaging in comparative religion;

(3) the plaintiff should not be allowed to speak about religions other than Islam in Malaysia;

(4) the plaintiff has accused Hindus in Malaysia of being disloyal to the Prime Minister of Malaysia and instead were loyal to the Prime Minister of India;

(5) that loyalty to another country could be seen as treasonous;

(6) that by absconding India to avoid the law of the land for charges brought against him as aforesaid, the plaintiff was disloyal to the country of his origin;

(7) that some Malaysians were being manipulated by the plaintiff for his own selfish reasons;

(8) if the plaintiff is true to his religion, he ought to return to India and stand trial there; and

(9) Malaysians of all faiths will suffer the consequences of the plaintiff's conduct in insulting other races/religions.

(ii) fourth defamatory publication:

(1) that the plaintiff had questioned the loyalty of the Hindus in Malaysia;

(2) that the plaintiff had accused the Malaysian Hindus of being more loyal to the Prime Minister of India;

(3) that the plaintiff had said that the Chinese in Malaysia should leave Malaysia before himself;

(4) that the plaintiff's remarks about the Malaysian Chinese and Hindus have angered the non-Muslim community and have increased tension between Muslims and non-Muslims in Malaysia;

(5) the apology was not sincere, was half-hearted, and was designed to cover up what the plaintiff said in Kota Bharu;

(6) Tun Mahathir also felt the plaintiff had overstayed his welcome in Malaysia;

(7) the plaintiff is a fugitive from India evading the Indian justice system;

(8) that if the plaintiff was a true Muslim, he would return to India to face the Indian justice system;

(9) that the plaintiff incites hate by using comparative religion as a means to belittle other religions and is a hate monger;

(10) that the plaintiff was a fraudster and a trickster; and

(11) that the plaintiff engaged in selective prosecution, in that the plaintiff did not appear to take action against Malay Muslims who criticised him but rather lodged police reports against non-Muslims.

[44] Ramasamy pleaded *Lucas-Box* justification espoused by the Federal Court in *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 6 MLJ 187 (FC), (as addressed in para 51 above). He seeks to prove his own reasonable meaning to the words complained of by showing reasonable ground for suggesting the meaning he sought to prove for the third and fourth defamatory publications:

(a) the third and fourth defamatory publications arose from Dr Zakir's speeches in Kota Bharu, Kelantan, on 8 August 2019, where he was alleged to have made offensive remarks against the Malaysian Chinese and Indians;

(b) Ramasamy alleged that Dr Zakir had labelled the Malaysian Chinese as guests/old guests (*pendatang*) in this country and asked them to go back,

saying that they don't belong to Malaysia. It is a racially derogatory term. Calling the Malays, Chinese, and Indians *pendatang* is taboo as it unfairly questions their Malaysian citizenship and loyalty;

(c) Ramasamy sliced up Dr Zakir's statement and alleged that Malaysian Hindus support the Prime Minister of India but not the Prime Minister of Malaysia and that Malaysian Hindus are more Indians than Malaysians themselves. This denigrated the Malaysian Hindus. These statements by Dr Zakir were criticised by MCA President Datuk Seri Wee Ka Siong (Part B encl 38, pp 870–872), Marina Mahathir (Part B, encl 38, pp 892–893); Lim Kit Siang (Part B, encl 38, pp 860); National Patriot Association (Part B, encl 38, pp 863–864); Syed Saddiq (Part B, encl 38, ppp 879–880); Tun Mahathir Mohamad (Part B, encl 38, pp 852–853).

[45] Ramasamy pleaded fair comment on the third and fourth defamatory publications:

(a) the offensive remarks on Indians and Chinese by Dr Zakir in his lecture in Kota Bharu, Kelantan, are issues of public interest. As the then Deputy Chief Minister II of Penang, Ramasamy has a legal, social, or moral duty to make the impugned third and defamatory publications as a matter of public interest; and

(b) the third and fourth defamatory publications constitute fair comments on the impugned statements based on true facts.

[46] Ramasamy pleaded qualified privilege on the third and fourth defamatory publications:

(a) the third and fourth defamatory publications were on the discharge of Ramasamy's public duty as the then Deputy Chief Minister II of Penang; and

(b) Ramasamy and the party receiving the impugned publications have a reciprocal interest in reading it. It was for the welfare of Malaysian society. There was no malice in the offending remarks.

[47] Considering the totality of evidence, the parties' respective arguments, and on the balance of probabilities, I find in favour of Dr Zakir, and it is my judgment that Ramasamy has failed to establish his proferred defences to the third and fourth defamatory publications:

(a) justification:

(i) Dr Zakir cited *Abdul Azeez bin Abdul Rahim v Lim Guan Eng* [2023] 6

MLJ 600; [2023] 1 LNS 1762 (CA), where the Court of Appeal observed that:

(1) a successful defence of justification must commensurate and correspond with the degree of the imputation of the defamatory statement. The tortfeasor cannot resile from his statement of guilt to cower behind lesser truth;

(2) in the present case, Ramasamy cannot establish the truth of his allegations/statements in the third and fourth impugned defamatory publications;

(3) during cross-examination, Ramasamy admitted that he could not confirm the facts of whether the plaintiff had been convicted for any fraudulent activities in any court in Malaysia, or to commit fraud against anyone, or whether police reports had been lodged against the plaintiff because he tricked someone: NOP, Vol 4, pp 1078–1079, pp 1081–1082, pp 1082–1083, encl 72; and

(4) Ramasamy's allegations in the third and fourth defamatory publications were successfully negated, leaving his allegation unfounded. He cannot now prove the truth or substantial truth in his impugned defamatory statements.

(ii) similar to the first two defamatory publications, in light of the evidence before me, I cannot see how justification can apply to the third and fourth defamatory publications when the truth or substantially the truth of the statement is proven unfounded at the trial when his allegation was successfully debunked.

(b) fair comment:

(i) to reiterate the foregoing, the truth or substantially the truth of the impugned statements in the third and fourth impugned defamatory statements are successfully proven unfounded at the trial;

(ii) similar to the first two defamatory publications, the third and fourth defamatory publications do not express a comment in their present form. It is also a provocation premised on an assumed statement of unsupported facts that Dr Zakir had successfully debunked at the trial;

(iii) Dr Zakir had earlier cited *Chew Mei Fun lwn Tony Pua Kiam Wee dan satu lagi* [2023] MLJU 1514; [2023] 1 LNS 1357 that held:

(1) to establish fair comment, it must be proven that the statement expresses an opinion grounded on truthful facts;

(2) evidently, the offending third and fourth defamatory publications by Ramasamy do not express opinions;

(3) it is not anchored on the truth or substantial truth of the matter; and

(4) unsupported, the allegations by Ramasamy would be actuated by malice and personal animosity towards Dr Zakir.

(iv) the presence of malice on the part of Ramasamy in the circumstances would disentitle the defence.

(c) qualified privilege:

(i) Ramasamy claimed he was under a moral and social duty to communicate the words complained of, and the public at large had a corresponding interest in receiving the information:

(1) Dr Zakir disagreed and said the public had no corresponding interest but for the police or the authorities. Citing *Dr Chong Eng Leong v Tan Sri Harris bin Mohd Salleh* [2017] 4 MLJ 611; [2017] 10 CLJ 657 that observed a defendant's conduct in publishing material giving rise to a defamatory imputation will not be reasonable unless the defendant had reasonable grounds for believing that the imputation was true, took proper steps, so far as they were reasonably open, to verify the accuracy of the material and did not believe the imputation to be untrue; and

(2) in the present case, Ramasamy admitted at the trial that he never took any steps to verify the contents of his article that vilified Dr Zakir when contemporaneous documents were available to debunk his defamatory allegations.

(ii) evidently, from the foregoing paragraphs, the defence does not apply. The defence of qualified privilege is not available if it is shown that a defendant has been actuated by actual or express malice or if he has used the occasion for some indirect or wrong motive: *Dato' Dr Low Bin Tick v Datuk Chong Tho Chin and other appeals* [2017] 5 MLJ 413; [2017] 8 CLJ 369 (FC). Since I have determined that Ramasamy was malicious in targeting and vilifying Dr Zakir, this defence will also be denied.

[48] Considering the evidence at the trial:

I find Ramasamy's attempted explanation unconvincing. The alternative meaning suggested by Ramasamy is an afterthought in trying to conform with the legal requirement on justification, fair comment, and qualified privilege.

(a) Dr Zakir, in his evidence, clarified the position that he had always been misquoted and taken out of context in his speeches that had maligned him unnecessarily. I have considered his evidence and clarification and

find no plausible reason to disbelieve him. Taken in context, the allegation levelled against him is not tenable. Dr Zakir clarified that he never offended the Malaysian Indians and Chinese. I have examined his clarification in its actual context and find he has been misquoted and maligned;

(b) Dr Zakir claims he is not a fugitive as Interpol has refused the Indian government's several requests to issue Red Notices on him for terrorism, money laundering, and hate speeches for want of convincing evidence. Even Justice Manmohan Singh of the Indian High Court, in refusing the Indian Authority's request for the forfeiture of his properties, was denied on lack of convincing evidence. The learned judge could not find any video recording of his alleged hate speeches. Ramasamy himself admitted in his evidence that Interpol had cleared Dr Zakir of all allegations, rendering them baseless, and he has no objection to Justice Manmohan Singh's statement. Ramasamy also agreed that Dr Zakir's presence in Malaysia is lawful;

(c) contrary to the allegations that he is on the run, Dr Zakir took the position that he is on hijrah to Malaysia for the preservation of his life and safety and the well-being of the ummah. Taking parallels with the *hijrah* taken by the Prophet from Makkah to Madinah, that was also a security concern;

(d) before publishing these impugned third and fourth defamatory publications, Ramasamy never sought Dr Zakir to verify and clarify his side of the story for the requirement of responsible journalism;

(e) Dr Zakir gave his version of the Dhaka attack, which I find no reason to disbelieve. Even Ramasamy admitted in his evidence that the Bangladeshi authorities have never requested the extradition of Dr Zakir on the Dhaka attack;

(f) it is evident that the third unfounded defamatory publication is also a targeted personal attack on Dr Zakir, 22 months after the second debacle. In light of the evidence at the trial, I agree with Dr Zakir that the offending article by Ramasamy is defamatory. It carries adverse connotations in that Dr Zakir: (i) is an unprincipled and/ or unethical person who would abuse the Islamic religion for his personal gain and/or purpose; (ii) has dishonestly accused the Malaysian Hindus of disloyalty to Malaysia and the Malaysian Prime Minister, Tun Dr Mahathir; (iii) he has calculatedly attempted to create a gap among the multi-ethnic religious Malaysians with the dubious motive of splitting the same and causing disharmony and disunity among them; (iv) he is, purportedly a fraudster, a trickster, and a fugitive, should not be given permanent resident status in Malaysia; (v) he is a criminal who should stand trial and not act as a coward, running from one country to another; (vi) he is a

convict who has run away from the Indian authorities to seek refuge in Malaysia; and (vii) he is a venom, a poison, a fraudster, a trickster, a fugitive, and a hate monger who is seeking asylum in Malaysia;

(g) on the fourth unfounded defamatory publication nine days after the third debacle. I agree that the offending interview is indeed slanderous of Dr Zakir. It carries adverse connotations that: (i) he is a dishonest person who would abuse the Islamic religion for his selfish purpose; (ii) he has unfairly and dishonestly accused Malaysian Hindus of being disloyal to Malaysia; (iii) he calculatedly attempted to create a gap among multi-ethnic and multi-religious Malaysians to obtain the support of the Malaysian Muslim community to enjoy immunity and privilege for his continued stay in Malaysia; (iv) he is dishonestly leveraging and taking advantage of the current polemic relating to race and religion in the country for his survival and benefit; (v) he has dubious motives for splitting the Malaysian population and bringing about disharmony and disunity among them; (vi) he does not deserve to be accorded a permanent residency in Malaysia; (vii) he is being used for specific political purposes and/or by political parties, and for that purpose, will use them to further his ambitions and, therefore, is partisan in Malaysian politics; and (viii) he is a criminal and has committed several offences under the Penal Code and the Sedition Act 1948;

(h) the degree of hostility shown by Ramasamy towards Dr Zakir is evident and has not abated since the first defamatory publication on his Facebook account on 10 April 2016. Undoubtedly, from the evidence at the trial, after approximately three years and four months, it had become very personal;

(i) similar to the first and second defamatory publications, the third and fourth defamatory publications are also constructed to provoke anger and hatred against Dr Zakir using unverified sources of information in the offending publications. In simply refusing to seek clarification and verification on the damaging contents of the two impugned defamatory publications, Ramasamy's objectivity and intent are suspect;

(j) Ramasamy admitted at the trial that he did not attempt to get Dr Zakir's side of the story before making the third and fourth defamatory publications, irrespective of the veracity or otherwise of those impugned adverse allegations. It seeks to vilify Dr Zakir to the Malaysian public. It is my considered view that this display of lack of objectivity by Ramasamy manifests malice on his part that is not concerned with the truth of the materials in the offending publications, but only that it garners widespread notoriety of Dr Zakir irrespective of the integrity of the information that the publications contained;

(k) I take cognisance that Ramasamy showed no remorse or regret for his actions even after all the defamatory allegations in the third and fourth defamatory publications had been debunked at the trial. It reflects upon his demeanour;

(l) the presence of malice would automatically disqualify the defences Ramasamy is proffering to the court over his conduct. There was no truth or substantial truth in the impugned statements of the third and fourth defamatory publications. He did not satisfy the responsible journalism test cited by the Federal Court in *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 6 MLJ 187 (FC); and

(m) on the plea of the *Lucas-Box* justification, I have examined Ramasamy's pleaded defence in Suit 53 and hold that the evidence at the trial does not fit his pleaded defence on the third and fourth defamatory publications. The suggested meaning ascribed by Ramasamy is not appropriately pleaded in his defence and is unproven at the trial. I find it an afterthought. He anchored his pleaded defence on s 8 of the Defamation Act 1957 in paras 26 and 34 for justification and s 9 for fair comment in paras 27 and 35 for Suit 53. In addition, the existence of malice denies Ramasamy the pleaded defences. I find Ramasamy's preferred defence hardly tangible in light of Dr Zakir's evidence on the third and fourth defamatory publications.

Fifth defamatory publication (In Suit 70)

[49] On 8 November 2019, approximately two and half months after the fourth debacle, Ramasamy targeted and released the fifth defamatory publication against Dr Zakir (refer para 12(a) above) in an article entitled *DAP leader accuses Zakir camp of faking Tamil Tigers revival* on the Malaysian Insight news portal (three years and six months after the first defamatory publication on 10 April 2016). There is no issue that this offending article has been published to the Malaysian public besides Dr Zakir via the Malaysian Insight online news platform.

[50] At the trial:

(a) Ramasamy:

(i) admitted publishing the impugned defamatory article;

(ii) however, he asserts that the impugned fifth publication only refers to the supporters of Dr Zakir and only contextually to Dr Zakir;

(iii) as rightly pointed out by Dr Zakir, Ramasamy confirmed that the impugned statement did refer to him (NOP, encl 72, p 1060); and

(iv) Dr Zakir cited *Muhammad Syuhaimi bin Hj Abdul Jofli & Anor v Hamirah Izzatie bt Sabarin* [2023] 9 MLJ 833; [2023] 3 CLJ 599 that referred to and followed *Knupffer v London Express Newspaper Ltd* [1944] 1 All ER 495; [1944] AC 116; [1944] 113 LJKB 251 in saying that:

(1) 'The test of whether words that do not specifically name the [Claimant] refer to him or not is this: Are they such as reasonably in the circumstances would lead persons acquainted with the Claimant to believe that he was the person referred to? *David Syme v Canavan* (1918) 25 CLR 234 at p 238 (Isaacs J); and

(2) this is an objective test. If such people would understand the words, the Claimant doesn't need to prove that there were, in fact, such people who read the offending words. Hence, an individual defamed by name in Cornwall has a cause of action even if he was unknown in that county at the time of publication: see *Gatley on Libel & Slander* (12th Ed) para 7.3; *Multigroup Bulgaria Ltd v Oxford Analytica Ltd* [2001] EMLR 28 at p 22.

(b) taken in its full context, there is no denying that the impugned fifth defamatory statement does indeed refer to or implicate Dr Zakir. Ramasamy, during cross-examination, agreed that Dr Zakir's name shouldn't be there (NOP, encl 72, pp 1089–1890); and

(c) I agreed with Dr Zakir's assertion; taken in context, the impugned fifth publication is indeed defamatory of Dr Zakir. He cited *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor* [2021] 2 MLJ 577; [2021] 4 CLJ 327 (FC) that it was a question of fact to be determined by the standard of an ordinary and reasonable-minded reader if the impugned article is defamatory concerning the impression created in the mind of such a reader after viewing the entire article (the media power of suggestion). It was argued by Dr Zakir that the offending article was ill-intended, carrying adverse connotations on the LTTE issue against him. It was actuated by malice, hatred, envy, and spite without verifying the truth in those impugned statements in the offending publication.

[51] Ramasamy pleaded justification, fair comment, and qualified privilege to defend the fifth defamatory publication (Suit 70).

Ramasamy:

(a) pleaded that the fifth defamatory publication on Tamil tigers LTTE revival did not refer to Dr Zakir, though it specifically mentioned his name in it. He cited:

(i) *Chong Swee Huat & Anor v Lim Shian Ghee (t/a L & G Consultants*

& Education Services [2009] 3 MLJ 665 (CA), which observed that the test is whether reasonable readers generally or a reasonable reader with particular knowledge would understand the statement to refer to the plaintiff;

(ii) he also cited *Noor Asiah bte Mahmood & Anor v Randhir Singh & Ors* [2000] 2 MLJ 175, which held that the offending articles, when read as a whole, would lead those who were dealing with the plaintiffs to the conclusion that the articles referred to them and that both the articles were defamatory of the plaintiffs and were written with the intention of identifying them. The test is an objective test; and

(iii) Ramasamy also cited *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Nurul Izzah bt Anwar & Anor* [2021] 2 MLJ 577; [2021] 4 CLJ 327 (FC) that observed that it was instead a case whether upon a consideration of the entire statement and not just a minor part, there were matters which were defamatory of the appellants. The Federal Court preferred to accept the view in *Charleston and another v News Group Newspapers Ltd and another* [1995] 2 All ER 313 that the publication must be taken to have been viewed as a whole, especially when considering whether any sting contained in the headlines, for example, had been neutralised by the context when viewed as a whole;

(b) Ramasamy argued that in the offending article, he had used the words camp, supporters, forces, and agencies of Dr Zakir. It was aimed at the supporters and followers of Dr Zakir;

(c) Ramasamy further argued that sometime in 2018, after he published the first and second defamatory publication, there were attempts by Dr Zakir's followers and supports (Firdaus Wong Hai Hung and Kamaruzaman Mohamad) to revive and bring the LTTE issue against him by spreading fake news, to deflect attention from Dr Zakir. Due to fake news over the LTTE issue, twelve individuals were arrested, including politicians from DAP. In the premise, Ramasamy claimed that he needed to respond by issuing the fifth defamatory publication targeting the supporters of Dr Zakir; and

(d) the Attorney General discontinued criminal proceedings against the twelve individuals as there was no prospect of conviction on the thirty-four preferred charges (Part B, encl 23, pp 478–494). Therefore, it was argued that the fifth offending article could not be defamatory to Dr Zakir.

[52] Ramasamy pleaded justification on the fifth defamatory publication. He raised the *Lucas-Box* justification as a defence and repeated his foregoing

arguments to justify the natural and ordinary meaning of the fifth impugned defamatory publication.

[53] Ramasamy pleaded fair comment on the fifth defamatory publication. He argued that the impugned statements were based on true facts; it was a comment and not a statement of facts involving a public interest matter;

[54] Ramasamy pleaded qualified privilege on the fifth defamatory publication, in that he made the offending article in the discharge of his public or private duty; it was fairly made to parties with corresponding interest to receive it for the welfare of the society; and

[55] Considering the totality of evidence before me, the parties' respective arguments, and on the balance of probabilities, I find in favour of Dr Zakir, and it is my judgment that Ramasamy has failed to establish his proferred defences to the fifth defamatory publication:

(a) justification:

(i) Dr Zakir pointed out that in asserting justification, Ramasamy had mentioned the names of specific individuals who had supposedly uttered statements against him being involved in the LTTE terrorist group. It was proven that those names were never mentioned in the offending article;

(ii) in denying the defence of justification, Dr Zakir asserted that contrary to Ramasamy's assertions, Dr Zakir: (1) has no hold or influence over the government; (2) he is not and has never been a politician; (3) he is an Islamic preacher beholden to its tenets to promote unity, harmony and brotherhood; (4) he never directed the named individuals by Ramasamy to utter those allegations against Ramasamy; (5) he has no knowledge of the alleged statement uttered by those individuals; (6) by Ramasamy suggesting in the offending article that it is unreasonable to make such allegations against LTTE, they do not harm anyone, suggest support for LTTE from Ramasamy; (7) LTTE is included in the terrorist list by KDN, and not at the insistence of Dr Zakir; and (8) it is unbecoming of a Deputy Chief Minister of Penang to engage in libel against Dr Zakir;

(iii) there is no compelling evidence of the truth or substantial truth in the contents of this offending publication produced at the trial; and

(iv) in light of the foregoing, justification cannot apply to the fifth defamatory publication.

(b) fair comment:

(i) to reiterate the foregoing, the truth or substantially the truth of the impugned statements in the fifth defamatory publication are successfully proven unfounded at the trial;

(ii) the present offending publication, as with the first four offending publications, does not express a comment in its current form;

(iii) it is a provocation premised on an assumed statement of unsupported facts that Dr Zakir had successfully debunked at the trial;

(iv) Dr Zakir drew my attention to O 78 r 3(2) of the ROC 2012, which requires the defendant in an action for defamation to plead the expression of opinion as distinct from the statement of facts that he relies on. In the present case, Ramasamy has failed to do that, which renders his defence unsustainable: *Dato' Dr Tan Chee Khuan v Chin Choong Seng @ Victor Chin* [2011] 8 MLJ 608; [2011] 8 CLJ 574; *Crowd Care Sdn Bhd & Anor v Ling Lek Foo* [2021] MLJU 2831; [2021] 1 LNS 2384; and *Tan Sri Dato' Lim Guan Teik v Tan Kai Hee* [2014] 9 MLJ 363; and

(v) I find the fifth defamatory publication to be actuated by malice as there is no compelling evidence from Ramasamy as to why Dr Zakir's name should be implicated. As a matter of fact, Ramasamy himself, in his evidence, admitted as much (NOP, encl 72, pp.1089-1890).

(c) qualified privilege:

(i) Ramasamy claimed he was morally and socially obliged to communicate the words complained of. The public at large had a corresponding interest in receiving the information. Still, Dr Zakir, in his evidence, disagreed and said the public had no corresponding interest but for the police or the authorities to investigate if there is merit in it. It is incorrect for Ramasamy to malign him in such a manner when he had nothing to do with it;

(ii) At the trial, Ramasamy could not verify the statements in the fifth impugned defamatory publication. Dr Zakir cited *Abdul Azeez bin Abdul Rahim v Lim Guan Eng* [2023] 6 MLJ 600; [2023] 1 LNS 1762 (CA); *Datuk Harris Mohd Salleh v Datuk Yong Teck Lee (sued in his personal capacity and as an officer of the second respondent) & Anor* [2017] 6 MLJ 133; [2018] 1 CLJ 145 (FC) on the necessity to verify the truth and accuracy of the impugned information before publishing it or will fail the required threshold for qualified privilege;

(iii) Ramasamy has no compelling evidence that he had taken steps to verify and authenticate the integrity of the information before

publishing it in his offending fifth defamatory publication; and

(iv) it is my finding that in the circumstances, the defence of qualified privilege is denied, mainly when the offending publication is actuated by malice to vilify Dr Zakir;

[56] Considering the evidence at the trial:

(a) from the totality of the evidence at the trial, I am disinclined to believe Ramasamy's assertion that nowhere had he mentioned in the fifth defamatory publication of Dr Zakir's involvement in the revival of the LTTE issue. The evidence does not support Ramasamy's argument. See Dr Zakir's evidence in NOP, Vol 3, pp 698–700. Though he argued that it was targeted at the supporters of Dr Zakir, I could not help but notice in the evidence that he did take a direct swipe at Dr Zakir ('Zakir Naik is one factor in this resurrection ...'). It wouldn't have been necessary if it hadn't been targeted at Dr Zakir. The fifth unfounded defamatory publication was also a personal attack on Dr Zakir, three and a half years after the first debacle on 10 April 2016;

(b) in light of the evidence at the trial, the offending article by Ramasamy is also defamatory. The position taken by Ramasamy that the offending publication merely refers to Dr Zakir's supporters only is unsustainable;

(c) the offending article carries adverse connotations as claimed by Dr Zakir that he: (i) was instrumental in persuading the Malaysian authorities to take action against the supporters of Liberation Tigers of Tamil Eelam ('LTTE') in Malaysia to divert the attention from himself; (ii) he has manipulated and/or lobbied the Malaysian authorities for his benefit and/or advantages; (iii) is the architect or mastermind of the arrest of the supporters of LTTE in Malaysia; and (iv) is being used for specific political purposes and/or political parties; he will use them to further his ambitions and, therefore, is partisan in Malaysian politics;

(d) I observed that the degree of hostility shown by Ramasamy towards Dr Zakir did not abate throughout the three and half years concerning the five impugned defamatory publications. It has become highly personal, with evidence pointing to comparative religious discourses being taken out of context;

(e) similar to the earlier four defamatory publications, the fifth defamatory publication was also constructed to provoke anger and hatred against Dr Zakir using unverified sources of information in the offending publication. In failing to seek clarification and verification of the impugned fifth defamatory publication's damaging contents, it is my judgment that Ramasamy's objectivity and intent are suspect. Unsupported, it seeks to vilify Dr Zakir;

(f) similar to my finding in the four other defamatory publications, it is my considered view that this display of lack of objectivity by Ramasamy manifests malice on his part that is not concerned with the truth of the materials in the offending publications but only that it garners widespread notoriety of Dr Zakir irrespective of the integrity of the information in that publication;

(g) Ramasamy proceeded without verifying the facts of the offending article that carries such adverse connotations on the standing and credibility of Dr Zakir. It is actuated by malice. This presence of malice would automatically disqualify the defences Ramasamy is proffering to the court. There was no truth or substantial truth in the impugned statements of the fifth offending publication. Ramasamy failed the responsible journalism test cited by the Federal Court in *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 6 MLJ 187 (FC);

(h) Ramasamy's preferred defence is hardly tangible in light of Dr Zakir's evidence on the fifth impugned defamatory publication. Ramasamy's conduct had tarnished, smeared, and damaged Dr Zakir's standing and credibility to the public, and he must be held accountable; and

(i) on the plea of the *Lucas-Box* justification, I have examined Ramasamy's pleaded defence in Suit 70 and hold that the evidence at the trial does not fit his pleaded defence on the fifth defamatory publication. The suggested meaning ascribed by Ramasamy is not appropriately pleaded and is unproven at the trial. I find it an afterthought. He anchored his pleaded defence on s 8 of the Defamation Act 1957 in para 8 for justification and s 9 for fair comment in para 9 for Suit 70. In addition, the existence of malice denies Ramasamy the pleaded defences.

DAMAGES

[57] In canvassing for the quantum of damages, Dr Zakir:

[58] Cited *Chin Choon @ Chin Tee Fut v Chua Jui Meng* [2005] 3 MLJ 494; [2005] 2 CLJ 569 (CA), where the late Gopal Sri Ram JCA referred to and followed *Defamation Law, Procedure & Practice* by Price & Duodu (3rd Ed, para 20–04 at p 208) says that the quantum of damages awarded in respect of vindication and injury to reputation and feelings depends on several factors:

(a) the gravity of the allegation;

(b) the size and influence of the circulation;

(c) the effect of the publication;

(d) the extent and nature of the claimant's reputation;

(e) the behaviour of the defendant; and

(f) the behaviour of the claimant.

[59] Dr Zakir also alludes me to Sir Thomas Bingham MR (as he then was) in *John v MGN Ltd* [1997] QB 586, where it was said that the factors for consideration in the following passage:

> In assessing the appropriate damages for injury to reputation, the most important factor is the gravity of the libel; the more closely it (the defamation) touches the plaintiffs personal integrity, professional reputation, honour, courage, loyalty, and the core attributes of his personality, the more serious it is likely to be. The extent of publication is also very relevant; a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. A successful plaintiff may properly look to an award of damages to vindicate his reputation, but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place.

[60] It was argued that:

(a) there is no doubt:

(i) Dr Zakir is a renowned and highly respected speaker on Islam and comparative religion worldwide who has given several thousands of public lectures on the subject worldwide and holds numerous awards and accolades: encl 49, para 290, pp 250–251;

(ii) he has more than 17.5m followers on his Facebook account and has appeared regularly on many international TV Channels in over 175 countries worldwide;

(iii) he has authored several books on Islam and comparative religion; and

(iv) the foregoing information was unchallenged at the trial.

(b) the five defamatory publications circulated to the public coming from a man of position as Deputy Chief Minister of Penang II had tarnished and adversely impacted Dr Zakir's standing in the public eye;

(c) there can be no doubt that the five defamatory publications maliciously maligning Dr Zakir have been published and republished with wide circulation on the Internet without borders, bringing his standing into disrepute: *Lim Lip Eng v Ong Ka Chuan (as a public officer of a society registered as Malaysian Chinese Association)* [2022] 4 MLJ 454; [2022] 5 CLJ 847 (FC). Dr Zakir pleaded that:

(i) the five defamatory publications are, in the circumstances of the case, actuated by malice, hatred, envy, and spite sans any verification of the veracity or integrity of the allegations;

(ii) the publication of the five defamatory materials intended to portray Dr Zakir as a bad person and a threat to Malaysia's national security, peace, and harmony;

(iii) the five defamatory publications are unfounded, utter fabrications, spurious, entirely fictitious, and/or have been twisted and slanted for the selfish needs of Ramasamy;

(iv) the ramifications created by the five defamatory publications constitute grave and vicious libel and slander on Dr Zakir; and

(v) the five defamatory publications by Ramasamy that have been published and re-published were intended to:

(1) incite public hatred, ill-will and/or contempt of Dr Zakir;

(2) garner cheap publicity for Ramasamy; and

(3) humiliate, ridicule, and expose Dr Zakir to physical, mental, emotional, or psychological harm.

[61] In support, Dr Zakir cited:

(a) *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun* [2000] 4 MLJ 77 (FC) where the Federal Court awarded a cumulative award of RM7 million for aggravating degree of libel. The court considered that no apology, retraction, or withdrawal can ever be guaranteed to completely undo the harm of the defamatory statements or hurt the same has caused;

(b) *Dato' Sri Lai Cha Suang @ Jessy Lai & Anor v Lim Lip Eng* [2023] MLJU 819; [2023] 1 LNS 705 (HC), an award of RM2m was justly awarded;

(c) *Datuk Harris Mohd Salleh v Datuk Yong Teck Lee (sued in his personal capacity and as an officer of the second respondent) & Anor* [2017] 6 MLJ 133; [2018] 1 CLJ 145 (FC), RM600,000 was observed by the Federal Court as a reasonable sum;

(d) *Mazlan bin Aliman & Anor v Lembaga Kemajuan Tanah Persekutuan* [2016] MLJU 1049; [2016] 1 LNS 971 (CA), the Court of Appeal affirmed the HC order awarding RM350,000 as general and aggravated damages with a cost of RM150,000;

(e) *Nurul Izzah binti Anwar v Tan Sri Khalid bin Abu Bakar & Anor* [2018] MLJU 472 (HC) awarded the plaintiff RM400,000 from D1 (Tan Sri Khalid Abu Bakar) and RM600,000 from D2 (Dato Sri Ismail Sabri Yaakob);

(f) *Abdul Azeez bin Abdul Rahim v Lim Guan Eng* [2023] 6 MLJ 600; [2023] 1 LNS 1762 (CA), the Court of Appeal awarded RM250,000 in general damages to the appellant;

(g) *Lim Guan Eng v New Straits Times Press (M) Bhd* [2017] 9 MLJ 622 (HC), was awarded RM300,000 as general and aggravated damages due to the high standing of Lim Guan Eng; and

(h) in *Chin Choon @ Chin Tee Fut v Chua Jui Meng* [2005] 3 MLJ 494; [2005] 2 CLJ 569 (CA), the Court of Appeal awarded RM200,000 as a global award of damages.

In the circumstances, Dr Zakir prays for the following:

(i) RM2.5m general damages (500,000 x 5 defamatory publications);

(ii) RM1m compensatory damages for all five defamatory publications;

(iii) RM1m aggravated damages for all five defamatory publications;

(iv) RM1m exemplary damages for all five defamatory publications;

(v) RM200,000 costs for both Suit 53 and Suit 70;

(vi) a mandatory injunction against Ramasamy compelling him to remove the five defamatory publications from the related websites within seven days from the pronouncement of the judgment under the jurisdictional powers of the High Court under s 53 of the Specific Relief Act 1950 and its inherent jurisdiction;

(vii) A permanent injunction against the Defendant to restrain the Ramasamy from publishing, distributing and/or uploading any defamatory statement against Dr Zakir on any medium whatsoever, under the jurisdictional powers of the High Court under ss 50, 51(2) and 52 of the Specific Relief Act 1950 and its inherent jurisdiction; and

(viii) an unreserved, unequivocal, and unconditional apology to be published in the following newspapers/news portals/social media within seven days from the date of the court's order:

(1) *Berita Harian*;

(2) *The Star*;

(3) *Sinar Harian*;

(4) *Tamil Nesan*;

(5) *Sin Chew Daily*;

(6) *Free Malaysia Today (FMT)*; and

(7) the defendant's Facebook page.

In the circumstances, Dr Zakir prays for order in terms of his prayers with cost.

[62] For the quantum of damages, Ramasamy:

(a) cited *Restoran Nasi Kandar Irfanah Sdn Bhd v The New Straits Times Press (Malaysia) Bhd and another appeal* [2021] MLJU 1946 (HC) that said that the current trend and settled principle that the award of damages in defamation cases should not be overly excessive and exorbitant having in mind the parties' standing and reputation in society;

(b) he cited *Cheong Fatt Tze Mansion Sdn Bhd v Hotel Continental Sdn Bhd (Hong Hing Thai Enterprise Sdn Bhd, third party)* [2011] 4 MLJ 354 that observed aggravated damages are awarded as a form of higher compensation to show the disapproval of the acts of a defendant which were carried out in such a manner that the plaintiff has suffered more than would normally be expected in such a case (*Tort Law* by Catherine Elliot and Frances Quinn (7th Ed) 2009). Such damage is to compensate the plaintiff an extra sum for the injury to his feelings and pride or dignity;

(c) he cited *M Wealth Corridor Sdn Bhd (formerly known as Fantastic Megaway Sdn Bhd) v Chan Tse Yuen & Co (sued as a firm)* [2018] MLJU 360, which observed that exemplary damages are not compensatory but rather are punitive in nature. The purpose of such an award is to punish the wrongdoer for conduct that has been variously described, among other things, as outrageous, oppressive, appalling, high-handed, or in cynical disregard for the rights of the plaintiff. In *Lee Ewe Poh v Dr Lim Teik Man & Anor* [2011] 1 MLJ 835, it was observed that exemplary damages serve the purpose of offering a serious punishment to the defendant to deter others from behaving in the same way, in referring to and following Lord Devlin in *Rookes v Barnard and others* [1964] AC 1129, that the fundamental basis of exemplary damage must first be satisfied by the plaintiff ie, the plaintiff has to prove the culpability of the first defendant's conduct which must be so outrageous as to deserve punishment or deterrence; and

(d) Ramasamy, therefore, argued that he did not deliberately, in bad faith, publish the five defamatory publications. Therefore, aggravated and exemplary damages should not be awarded.

In the circumstances, Ramasamy prays that Suit 53 and Suit 70 be dismissed with cost.

THE LAW

The burden of proof

[63] It is trite in law that all cases are decided on the legal burden of proof being discharged. The burden of proof in establishing its case is on the plaintiff. It is not the defendant's duty to disprove it. The evidentiary burden is trite that those who allege a fact are duty-bound to prove it (see ss 101, 102, and 103 of the Evidence Act 1950). In *Selvaduray v Chinniah* [1939] 1 MLJ 253 at p 254 (CA) held:

> The burden of proof under s102 of the Evidence Enactment is upon the person who would fail if no evidence at all were given on either side and accordingly, the plaintiff must establish his case. If he fails to do so, it will not avail him to turn around and say that the defendant has not established his. The defendant can say it is wholly immaterial whether I prove my case or not. You have not proved yours.

In *Johara Bi binte Abdul Kadir Marican v Lawrence Lam Kwok Fou & Anor* [1981] 1 MLJ 139, (FC) held:

> It was all a matter of proof and that until and unless the plaintiff has discharged the onus on her to prove her case on a balance of probabilities, the burden did not shift to the defendant, and no matter if the defendant's case was completely unbelievable, the claim against him must in these circumstances be dismissed. With respect, we agree with this judicial approach.

A defamatory statement

[64] is a statement which tends to lower a person in the estimation of right-thinking members of society generally or cause him to be shunned or avoided or to expose him to hatred, contempt, or ridicule (see *Ummi Hafilda bte Ali v Ketua Setiausaha Parti Islam Se Malaysia (PAS) & Ors* [2006] 4 MLJ 761 at p 770 per Gill FCJ citing *Sim v Stretch* [1936] 2 All ER 1237).

[65] The Federal Court in *Raub Australian Gold Mining Sdn Bhd (in creditors' voluntary liquidation) v Hue Shieh Lee* [2019] 3 MLJ 720; [2019] 3 CLJ 721 (FC) observed that it is a question of law in construing the impugned statement as being defamatory or otherwise. It requires an objective test to determine whether: (a) the imputation in the statement would lower the plaintiff in the estimation of right-thinking members of society generally (reasonable men); (b) the imputation would tend to cause others to shun or avoid the plaintiff; and (c) would the words tend to expose the plaintiff to hatred, contempt, or ridicule: *Gately on Libel and Slander* (12th Ed) p 7.

[66] Or to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade, or business) see s 5 of the Defamation Act 1957 (Act 286) ('the Act'))]. An objective test to determine whether, under the circumstances in which the words were published, reasonable men to whom the publication was made would likely understand it in a defamatory or libellous sense: *Allied Physics Sdn Bhd v Ketua Audit Negara (Malaysia) & Anor and other appeals* [2016] 5 MLJ 113; [2016] 7 CLJ 347 (CA).

[67] What may lead to a tendency to lower a person's reputation in the eye of the public depends largely on the facts and circumstances in each case.

[68] Mere hurt feelings are insufficient for the award of damages under defamation. The interest to be protected by this tort is a person's good name and reputation. The law on defamation in Malaysia is primarily anchored on the English common law principles except as far as it had been modified by the Act, which is in *pari materia* with the English Defamation Act 1952 (see *Soh Chun Seng v CTOS-EMR Sdn Bhd* [2003] 4 MLJ 180; [2004] 5 CLJ 46).

[69] Defamation is committed when the defendant publishes words or matters containing untrue imputations against the plaintiff's reputation to a third person.

[70] Liability for defamation is divided into two categories: libel and slander. If the publication is made in a permanent form, broadcast, or part of a theatrical performance, it is libel. It is slander if it is in some transient state or is conveyed by spoken words or gestures.

[71] The civil law of defamation is primarily based on case law. Although the Act does not define defamatory matters, it has given some well-known common law principles statutory force. Libel or published defamation, for example, a newspaper article, television broadcast, pictures, and words, can be defamatory (see Civil Trial Guidebook by Marsden Law Book). In *Kian Lup Construction v Hongkong Bank Malaysia Bhd* [2002] 7 MLJ 283; [2002] 7 CLJ 32 Ramly Ali J (at that time) said:

> In a tort of defamation, the plaintiff must prove three elements, namely the statement must bear defamatory imputations, must refer to the plaintiffs reputation and must have been published to a third person by the defendant.

(See also *Ayob bin Saud v TS Sambanthamurthi* [1989] 1 MLJ 315; [1989] 1 CLJ 152.)

In *Tan Sri Dato Vincent Tan Chee Yioun v Haji Hasan bin Hamzah & Ors* [1995] 1 MLJ 39 (HC), it was held:

(a) it is a question of law for the court to decide whether the natural and ordinary meaning of the words used could convey a defamatory meaning of and concerning the plaintiff;

(b) libel does not depend on the intention of the defamer. It was irrelevant to consider the meaning the writer and publisher intended to convey on defamation; and

(c) the question is to be determined by an objective test.

[72] Therefore, based on the above authorities, the plaintiff has to prove the following:

(a) the statement was defamatory;

(b) it referred to him; and

(c) it was published, communicated to a third party

Once proven, the burden then shifted to the defendants to prove any of the defences:

(i) justification or, in other words, the truth of the utterance;

(ii) fair comment on a matter of public interest; or

(iii) that it was made on a privileged occasion.

Justification

[73] Section 8 of the Defamation Act 1957:

> In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiffs reputation regarding the truth of the remaining charge.

[74] In an action for libel or slander:

(a) in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges;

(b) all that is needed to be established is that the impugned defamatory statements are true or substantially true (see *Dato Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia Bhd & Anor* [2014] 4 MLJ 242); and

(c) justification affords a complete defence against defamation.

Fair comment

[75] Section 9 of the Defamation Act 1957:

> In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression

of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

[76] *Dato' Sri Dr Mohamad Salleh bin Ismail & Anor v Mohd Rafizi bin Ramli* [2022] 3 MLJ 758; [2022] 5 CLJ 487 (FC) reiterates the applicable elements:

(a) the words complained of are comments;

(b) the comments are on a matter of public interest or where it will affect the public so that they may be legitimately interested in it;

(c) the comments are based on true facts; and

(d) the comments are ones that a fair-minded person can honestly make based on the facts.

[77] In fair comment, if the primary facts are true, in the absence of malice and falsehood, fair comment should succeed: *Mohd Rafizi bin Ramli v Dato' Sri Dr Mohamad Salleh bin Ismail & Anor* [2019] 6 MLJ 587 (CA).

Qualified privilege

[78] Qualified privilege is a defence:

(a) where the impugned statements were published pursuant to a discharge of legal, social, or moral duty with no ill will or malicious intent;

(b) the recipient of the statements had a corresponding interest in receiving them; and

(c) the impugned statements constitute fair comments and are covered under qualified privilege.

Lord Atkinson in *Watt v Longsdon* [1930] 1 KB 130:

> a privileged occasion is, in reference to qualified privilege, an occasion where the person who makes a communication has an interest or a duty, legal, social, or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential.

[79] To discover whether such a duty exists, the following question serves as a good test: 'Would the great mass of right-minded men in the position of the defendant have considered it their duty under the circumstances to make the communication?' In *Hasnul bin Abdul Hadi v Bulat bin Mohamed & Anor* [1978] 1 MLJ 75 (HC) said that statements made on a subject matter in which both the defendant and the persons to whom the statements are made have had a legitimate common interest come under one of the classes of statements published on the occasion of qualified privilege.

FINDINGS OF THIS COURT

[80] I have examined all cause papers, the evidence at the trial, and the parties' submissions in canvassing for their position in Suit 53 and Suit 70. Considering the totality of the evidence and my observations and considerations concerning the parties' respective arguments in paras 14–56 above, and in addition to, it is my considered determination:

(a) the Federal Court in *Tan Sri Dato Vincent Tan Chee Yioun v Haji Hasan bin Hamzah & Ors* [1995] 1 MLJ 39 observed it is for the court to determine the question of law whether the plaintiff's allegations of defamation were capable of conveying a defamatory meaning within the context that it was published and understood within that context: *C Sivanathan v Abdullah bin Dato' Haji Abdul Rahman* [1984] 1 MLJ 62. In *Fields v Davis* [1955] CLY 1543, cited in Makresinis & Deakin's *Tort Law* (8th Ed, Oxford University Press, 2019, p 639), the court held that when the defendant called a married woman a tramp, it was not defamatory, because it was uttered by the defendant in a fit of temper and were understood by those around as being mere vulgar abuse;

(b) the Court of Appeal in *Abu Hassan bin Hasbullah v Zukeri bin Ibrahim* [2018] 6 MLJ 396; [2018] 3 CLJ 726 (CA) reiterated the basic principles that: (i) is the impugned statement defamatory in nature; (ii) does the impugned statement refer to the plaintiff; and (iii) has the statement been published to third parties. It must be in the affirmative on all three. In construing the offending paragraph, it is necessary to consider the actual words used within the context in which it was issued, whether it was libellous premised on the foregoing factual matrix of this case; and

(c) appraising the background and complete facts of the present case, on the balance of probabilities, Dr Zakir's has succeeded in establishing his claim on defamation in the five impugned publications by Ramasamy.

[81] I am guided by the Court of Appeal in *Keluarga Communication v Normala Samsudin* [2006] 2 MLJ 700; [2006] 2 CLJ 46 (CA) that the test to be applied when considering whether a plaintiff's statement is defamatory is well settled in that it is an objective one that must be given a meaning a reasonable man would understand. In considering whether the words complained contained any defamatory imputation, it is necessary to consider the whole article, citing *Gatley on Libel & Slander* (10th Ed):

> ... not only the actual words used but the context of the words. It follows from the fact that the context and circumstances of the publication must be taken into account that the plaintiff cannot pick and choose parts of the publication which, standing alone, would be defamatory. This or that sentence may be considered defamatory, but there may be other passages which take away the sting.

This principle was also cited in the Court of Appeal's decision in *Synergy Promenade Sdn Bhd v Datuk Seri Hj Razali bin Hj Ibrahim* [2021] 6 MLJ 947; [2021] 8 CLJ 891 (CA). In *C Sivanathan v Abdullah bin Dato' Haji Abdul Rahman* [1984] 1 MLJ 62 quoting Lord Herschell LC in *Australian Newspaper Co v Bennett* [1894] AC 284 pp 287–288:

> The words have to be considered in the context in which they were spoken: 'People not infrequently use words, and are understood to use words, not in their natural sense, or as conveying the imputation which, in ordinary circumstances, and apart from their surroundings, they would convey, but extravagantly, and in a manner which would be understood by those who hear or read them as not conveying the grave imputation suggested by a mere consideration of the words themselves'.

[82] In my considered determination, in the context that it was issued, the five offending publications carry libellous and slanderous connotations on Dr Zakir. From the evidence at the trial, the impugned five defamatory publications undoubtedly refer to Dr Zakir, published on social media and online news platforms, a news medium with no borders.

[83] Dr Zakir has, therefore, satisfied three essential elements of the tort of defamation: (a) the five impugned publications are defamatory in nature; (b) the five impugned defamatory publications refer to Dr Zakir; and (c) the five impugned defamatory publication has been published to third parties.

[84] Ramasamy evidently could not prove the truth or appropriately justify the five defamatory publications that had libelled and slandered Dr Zakir. I find no convincing evidence to establish the truth or substantially the truth of the five impugned defamatory publications for justification, fair comments, and qualified privilege to apply. His proferred defences are without merits and unsustainable. I take the evidence by Ramasamy in his defence with an abundance of caution. I am unpersuaded by his arguments. Ramasamy's evidence is primarily untenable to negate Suit 53 and Suit 70 against him.

[85] The animosity and malice in the unrelenting personal attacks of Dr Zakir in those five impugned defamatory publications by Ramasamy occurred from 10 April 2016 to 8 November 2019 (approximately three and half years). Undoubtedly, from the language and the context in which it was used, it got very personal. Those five impugned defamatory publications were personal attacks angled to disparage, ridicule and lower Dr Zakir in the eyes of the general public.

CONCLUSIONS

[86] After appraising the evidence, all the relevant cause papers, and the written submissions by the respective parties, on the balance of probabilities, I find that Dr Zakir had discharged his burden in establishing his claims in Suit 53 and Suit 70.

[87] I find no merit in Ramasamy's preferred defences to the five defamatory publications. Accordingly, I entered final judgment for Dr Zakir on Suit 53 and Suit 70 based on a greater weight of evidence.

[88] After hearing arguments by parties on the quantum of damages and taking into consideration what was said by the Court of Appeal in *Chin Choon @ Chin Tee Fut v Chua Jui Meng* [2005] 3 MLJ 494; [2005] 2 CLJ 569 (CA), referring to and following the principles in *Defamation Law, Procedure & Practice* by Price & Duodu (3rd Ed, para 20–04 at p 208) by weighing, in a nutshell:

(a) the gravity of the allegation:

The five impugned defamatory publications were very severe, casting such severe unfounded aspersions on Dr Zakir with ill intent to harm the reputation, credibility, honour, and credibility of Dr Zakir;

(b) the size and influence of the circulation:

Undoubtedly, Dr Zakir has a massive following worldwide. The Federal Court in *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun* [2000] 4 MLJ 77 (FC) held that substantial awards were justified based on aggravating libel. It was libel and slander on the online platform with no borders, accessible to anyone with access to the internet;

(c) the effect of the publication:

The cumulative effect of the five unfounded defamatory publications for over three and a half years gravely maligned Dr Zakir to all his audiences, foreign and domestic. It exposes him unnecessarily to odium, contempt, and disrepute to the public;

(d) the extent and nature of the claimant's reputation:

No definitive and compelling evidence establishes Dr Zakir as a criminal and liar, a trickster, a fugitive, a fraud, a money launderer, and a terrorist. These unfounded allegations from suggestive and speculative evidence conjured from Ramasamy gravely impacted Dr Zakir's worldwide reputation as a religious preacher and a man of faith;

(e) the behaviour of the defendant:

The five defamatory publications' language, contents, and form

undoubtedly show malicious intent to gravely harm Dr Zakir's reputation over his position in comparative religious approaches. There is no doubt from the evidence that Ramasamy personally targeted and maligned Dr Zakir for three and a half years with no relent. As I had observed, even when Ramasamy's alleged truth or substantial truth of the impugned statements was debunked, there was no compelling evidence showing his regret or remorse over maligning Dr Zakir during that period; and

(f) the behaviour of the claimant:

Dr Zakir displayed exceptional patience and tolerance in facing the severe and aggravated personal attack from Ramasamy until he finally decided to arrest the onslaught and seek civil redress in Suit 53 and Suit 70 over the personal targeting of him by Ramasamy. Dr Zakir showed restraint and did not retort to malign Ramasamy in return. He did not seek to inflame the situation and go on a confrontation in the media for three and a half years.

[89] It is ordered that Ramasamy is liable to pay Dr Zakir cumulative award of damages amounting to RM1,450,000, which is fair and reasonable, comprising:

(a) general damages of RM200,000 for each defamatory publication (200,000 x 5: RM1m).

In awarding general damages, I have duly considered the materials in the foregoing guide by the Court of Appeal in *Chin Choon @ Chin Tee Fut v Chua Jui Meng* [2005] 3 MLJ 494; [2005] 2 CLJ 569 (CA). John Dixon J in *Wilson v Bauer Media Pty Ltd* [2017] VSC 521 in a case concerning an Australian celebrity Rebel Wilson observed in assessing damages:

> The purpose of an award of damages are to provide consolation for hurt feelings, compensation for damage to reputation, and vindication of the plaintiffs reputation. The assessment of general damages is necessarily imprecise and. Accordingly, damages are at large in the sense that they cannot be arrived at through calculation or the application of a formula. The sum awarded must demonstrate vindication of the plaintiffs reputation. The level of damages ought to reflect the high value which the law places upon reputation and, in particular, upon the reputation of those whose work and life depends upon their honesty, integrity and judgment. The gravity of the libel and the social standing of the parties are relevant in assessing the quantum of damages necessary to vindicate the plaintiff. The award must be sufficient to convince a bystander of the baselessness of the charge. At common law, it was legitimate to take into account not only what the plaintiff should receive but also what the defendant ought to pay. The extent of the publication and the seriousness of the defamatory sting are pertinent considerations. In determining the damage done to the plaintiffs reputation,

the court should also take into account the grapevine effect arising from the publication of the defamatory material.

It is well accepted that injury to feelings may constitute a significant part of the harm sustained by a plaintiff, and for which a plaintiff is to be compensated by damages. Injured feeling includes the hurt, anxiety, loss of self-esteem, sense if indignity and the sense of outrage felt by the plaintiff.

Datuk Patinggi Abdul Rahman Ya'kub v Abang Mohammad Bin Abang Anding [1979] 2 MLJ 185, Seah J observed that the higher the plaintiff's position, the heavier the damages (*Youssoupoff v Metro-Goldwyn-Mayer Pictures Ltd* [1934] 50 TLR 581). The reasons for higher award are that these persons are more vulnerable to defamation as far as they are more well-known, often held public positions of considerable responsibility and trust, encounter more people and have a wider circle of friends. In *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun* [2000] 4 MLJ 77 (FC), the Federal Court awarded a cumulative award of RM7m for aggravating degree of libel. The court considered that no apology, retraction, or withdrawal can ever guarantee to completely undo the harm of the defamatory statements or hurt the same has caused;

(b) compensatory damages of RM20,000 for each defamatory publication (RM20,000 x 5: RM100,000).

Apart from general damages, aggravated, and exemplary damages, Dr Zakir asks for compensatory damages of RM1mil for all five defamatory publications that I could not find any refuting arguments from Ramasamy in his submissions contesting the prayer apart from asking for nominal damages to be awarded. In the circumstances, I allowed RM100,000 out of RM1mil being asked for;

(c) Aggravated damages of RM20,000 for each defamatory publication (RM20,000 x 5: RM100,000).

In awarding aggravated damages (for the harm suffered by Dr Zakir beyond economic harm or general damages, such as anxiety, mental anguish, distress, pain and suffering for three and a half years and more), I am guided the Court of Appeal in *Chin Choon @ Chin Tee Fut v Chua Jui Meng* [2005] 3 MLJ 494; [2005] 2 CLJ 569 (CA), that observed the court will consider the defendants' conduct, and his motive when the tort was committed. An award of aggravated damages is justified by any kind of highhanded, oppressive, insulting, or contumelious behaviour by the defendant that increases the mental pain and suffering of the plaintiff (*McCarey v Associated Newspapers Ltd (No 2)* [1965] 2 QB 86). The later conduct of Ramasamy in relation to the libel/slander could increase the grief, annoyance, or distress of Dr Zakir, and this would be sufficient basis for the award of aggravated damages (*David Syme & Co*

Ltd v Mather [1977] VR 516). It may be awarded in addition to general damages (*Sistem Televisyen Malaysia Bhd & Ors v Nurullah bt Zawawi & Anor* [2015] 6 MLJ 703; [2015] 6 AMR 372 (CA)).

Lord Hailsham in *Cassell & Co Ltd v Broome* [1972] AC 1027 said that the 'natural indignation of the Court at the injury inflicted' can be the ground for awarding aggravated damages; and

(d) exemplary damages of RM50,000.00 for each defamatory publication. (RM50,000.00 x 5: RM250,000).

[90] In awarding exemplary damages, I am guided by the following: The Court of Appeal's decision in *Tradewinds Properties Sdn Bhd v Zulhkiple bin A Bakar & Ors* [2019] 1 MLJ 421 (CA) that had referred to and followed the CA's earlier decision in *Sambaga Valli a/p KR Ponnusamy v Datuk Bandar Kuala Lumpur & Ors and another appeal* [2018] 1 MLJ 784 that had ruled:

> [33] The exemplary damages or punitive damages-the two terms now regarded as interchangeable-are additional damages awarded with reference to the conduct of the defendant, to signify disapproval, condemnation or denunciation of the defendant's tortious act, and to punish the defendant. *Exemplary damages may be awarded where the defendant has acted with vindictiveness or malice, or where he has acted with a contumelious disregard for the right of the plaintiff.* The primary purpose of an award of exemplary damages may be deterrent, or punitive and retributory, and the award may also have important function in vindicating the rights of the plaintiff (see *Rookes v Barnard* [1964] 1 All ER 367 ... *Broome v Cassel & Company* [1971] 2 QB 345.

[91] The Court of Appeal in *Sambaga Valli* said:

> ... exemplary damages are not intended to compensate the plaintiff and are not recoverable as a matter of right. The amount of the exemplary damages award is left to the judge's discretion and is determined by considering the character of the defendant's misconduct, the nature and extent of the plaintiffs injury and the means of the defendant. The quantum of exemplary damages to be awarded must be appropriate to the wrongdoing inflicted ...

[92] The categories of cases propounded in *Rookes v Barnard* [1964] 1 All ER 367 are:

(a) where the plaintiff has been a victim of oppressive, arbitrary, or unconstitutional acts of servants of the governments (the present case, involving the tortuous act of the then Deputy Chief Minister II of Penang);

(b) where the defendant's act in disregarding the plaintiff's right has been calculated by him to bring in profit which exceeds the amount of compensation that he might have to pay the plaintiff (any form of advantage (not necessarily monetary) gained by the defendant in

defamation cases suffices *Chin Choon v Chua Jui Meng*, per Gopal Sri Ram JCA); or

(c) where a statute allows for the award of exemplary damages.

[93] In deciding the quantum of the exemplary damage, I have considered the three factors:

(a) the plaintiff cannot recover such damages unless he himself is the victim;

(b) since exemplary damages can be used for and against liberty and is a form of punishment without the safeguard of criminal law, it must be used with restraint, and in this regard the size of the award of exemplary damages should be moderate but at the same time reflecting the gravity of the wrongdoing, sufficient to punish the wrongdoer (*Cheng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors* [1993] 3 MLJ 352; [1994] 1 AMR 201); and

(c) the financial means of the parties, though irrelevant to compensatory damages, are relevant in assessing an award of exemplary damages. The conduct of the parties, including an honest apology (if any) to show genuine remorse by the defendant is also a relevant consideration (*Praed v Graham* (1889) 24 QBD 53).

[94] In the present case, Ramasamy at the time occupied the position as the Deputy Chief Minister II of Penang. A very high-ranking government official that command influence. From the totality of the evidence, while in that role, he vilified Dr Zakir in the offending materials.

[95] There was no apology (even though reported, he denies it), no remorse, and retractions or offer of retraction of the impugned defamatory materials (debunked) that I find were intentional and malicious in targeting and vilifying Dr Zakir over three and half years. It has undoubtedly injured Dr Zakir unnecessarily. It is trite law that in deciding quantum of damages, the court will consider amongst others the absence of or refusal of retraction or apology (*Chin Choon @ Chin Tee Fut v Chua Jui Meng* [2005] 3 MLJ 494; [2005] 2 CLJ 569 (CA)).

[96] Injunctive prayers as prayed are allowed.

[97] It is trite law that, injunctive relief can be granted in appropriate cases to restrain the publication (or further publication) of defamatory materials. It is my judgment that from the repetitive nature of Ramasamy continuously targeting and publishing offending/defamatory materials on Dr Zakir, for over three and half years unchecked, injunctive reliefs as prayed is necessary to arrest it from recurring in the future.

[98] Publishing an unreserved, unequivocal, and unconditional apology as prayed is allowed.

In *Lord McAlpine of West Green v Bercow* [2013] EWHC 1342 (QB) (QB) apart from paying damages, the defendant was ordered to apologise in open court.

It is trite in law, that an apology is not a defence. In *Datuk Harris bin Mohamed Salleh v Abdul Jalil bin Ahmad & Anor* [1984] 1 MLJ 97, it was ruled that an apology offered too late would be of no effect, it will not work towards lessening the defendant's liability in damages.

Mitigation of damages:

> Section 10(1) of the Defamation Act 1957 provides that a defendant may, provided he gives notice of his intention to do so at the time of delivering his defence, give evidence in mitigation of damages that he had made or offered an apology to the plaintiff before the commencement of the plaintiffs action or at the earliest opportunity afterwards if he did not have such an opportunity before.
>
> Under s 10(2) of the same Act, in an action for libel contained in any newspaper, any defendant who has paid money into court may state in mitigation of damages that such libel was inserted in such newspaper without actual malice and without gross negligence and that, either before the commencement of the action or at the earliest opportunity afterwards, he inserted or offered to insert in such newspaper a full apology for the said libel.

Seah J in *Datuk Patinggi Abdul Rahman Ya'kub v Abang Mohammad Bin Abang Anding* [1979] 2 MLJ 185, also observed that an apology both by letter and in open court (accepted by the plaintiff) is not a complete defence to an action for defamation. Moreover, no apology, retraction or withdrawal can ever be guaranteed completely to undo the harm that it has done, or the hurt caused, although it is a principal factor to consider in assessing damages.

[99] Global costs of *RM70,000* was also ordered against Ramasamy, payable within 30 days from today.

Suits 53 and 70 allowed.

Reported by Nabilah Syahida Abdullah Salleh